

# SUPPORT LEGAL ACTION ON CONTAMINATION IN US COURT

*Over the past 21 years, the Union Carbide Corporation has known that its chemicals were improperly disposed of and leaking in Bhopal, contaminating tens of thousands of people, ruining their health and their quality of life, sickening their children, and violating their human rights. The Indian central government must make submissions in the U.S. federal court system to support the claims of the people affected by groundwater contamination*

## WATER/SOIL CONTAMINATION:

Union Carbide's obsession with cutting costs meant that none of the six safety systems at the plant were functioning on the night of the disaster. But even before the disaster, in the years when the plant was being designed and built, Carbide employed double standards as compared to its 'sister' West Virginia plant. During the design phase in 1972, it was noted in internal UCC documents that: "The comparative risk of poor performance and of consequent need for further investment to correct it, is considerably higher in the UCIL operation than it would be had proven technology been followed throughout."



Internal Union Carbide documents, obtained through discovery, reveal that Carbide knowingly allowed pesticides and dangerous chemicals to leach into the drinking water supply of the nearby residents. In these documents, the designers expressed the opinion that if the liners for the solar evaporation ponds (pictured below) were not changed every two years, they would present "danger of contaminating subsurface waters supplies." Since their construction, over 25 years ago, the liners to the ponds have **never** been changed.

UCC knew that the ponds were leaking as early as 1982; they knew the water table nearby was contaminated as early as 1989, when their water samples were reported to cause "100% fish mortality." UCC has never taken any steps to protect or notify residents, and in fact still denies there is contamination. UCC has consistently lied about the danger to residents, many of whom are already gas affected.



## HEALTH EFFECTS AND RIGHTS VIOLATIONS:

Improperly disposed of waste, including many tons of stockpiled and abandoned chemicals, contaminated the watershed with chemicals such as 1, 2-dichlorobenzene, tetrachloroethene, trichloroethene, chloroform (2), carbon tetrachloride, naphthol and heavy metals such as mercury. **20,000 residents**, most of them already gas affected, depend on this water, and now many are

suffering from a multitude of secondary symptoms such as abdominal pain, giddiness, headache and fever. In limited studies of the health in water affected areas, **abnormally high levels of anemia and late menstruation** among women and girls has been recorded.

#### **PRECEDENT IN LAW:**

There is precedent for the United States court system to take an action like the one that would be necessary in the Bhopal case. In one U.S. case, a federal court ordered a defendant corporation to clean up contaminated land in Honduras and the 2nd Circuit of Appeals, in which of the plaintiffs' appeals are pending, has also recognized the authority of U.S. courts to order defendants Texaco Corporation to undertake clean-up in Ecuador. Under the Alien Torts Claims Act, foreign defendants may bring suit against US accused in US courts.

The New York federal court, headed by Justice Keenan, has repeatedly been overturned in its rulings against the Bhopal victims. It is the responsibility of the central government to make submissions in the U.S. federal court system to support the claims of the people affected by groundwater contamination.

#### **FUTURE ACTION TOWARDS RESOLUTION:**

The litigation against Union Carbide in the federal Southern District Court of New York, brought by Carbide victims on the basis of Carbide's ongoing contamination there, is proceeding. Thanks to the "no objection" certificate submitted by the government of India and the Madhya Pradesh government to this court in 2004, stating that the government would allow Union Carbide to clean up its former site if directed by the New York Judge, plaintiffs are able to seek the relief of a comprehensive environmental remediation of off-site and on-site wastes. This would be paid for by Union Carbide. Survivors and their lawyers are presently working with an independent panel of experts to evaluate the situation at the plant site and come up with plans for a comprehensive remediation of the environment including soil and drinking water.

#### **TIMELINE**

- 1972** : Engineers working on the design stage plans for the Union Carbide pesticide factory in Bhopal write that the proposed design posed "danger of polluting subsurface water supplies in the Bhopal area" and "new ponds will have to be constructed at one to two-year intervals throughout the life of the project" in order to address this problem. (UCC 04129). No new ponds were ever constructed.
- April 1982**: In an internal UCC telex it is reported that "Continued leakage from evaporation pond causing great concern." (UCC 01736)
- 1989**: Water testing by UCC reports that "Majority of the liquid samples contained naphthol and/or Sevin in quantities far more than permitted by ISI for onland disposal. All samples caused 100% mortality to fish in toxicity assessment studies and were to be diluted several fold to render them suitable for survival of fish." (UCC 02268).
- November 1999**: Gas victims and one contamination victim file a class action suit against Union Carbide Corporation and former CEO Warren Anderson, charging Carbide with violating international human rights law, environmental law, and international criminal law.
- 1999**: Greenpeace International calls Bhopal a "Global Toxic Hotspot" based on an analysis of the chemical stockpiles left at the factory site.
- August 2000**: Judge Keenan summarily dismisses the class action suit. Lawyers acting for the plaintiff survivors appeal the decision.
- November 2001**: United States 2nd Circuit Court of Appeals reinstates parts of the class action, allowing all claims of pollution and contamination unrelated to the disaster to proceed. The federal court also directs Union Carbide to provide internal documents as part of discovery proceedings.
- November 11, 2002**: Plaintiffs organizations share documents from the discovery process of the U.S. class action suit with the Indian Central Bureau of Investigations. CBI acknowledges that the documents will be of great use for prosecution and extradition of Warren Anderson.
- March 18, 2003**: Federal Judge John F. Keenan once again dismisses the class action lawsuit, filed by Union Carbide's victims and their supporters.
- 2003**: A survey in the water-affected neighborhood Annu Nagar, carried out by Sambhanva Trust, finds that every second person in the community was suffering from a multitude of symptoms. The most common symptoms among all age groups were found to be abdominal pain followed by giddiness, pain in chest, headache and fever.
- March 17, 2004**: The 2nd Circuit Court of Appeals, in New York, again remands part of the class action suit filed by Bhopal survivors. Significantly, the court holds that the federal court may order Union Carbide to clean up its abandoned factory site in Bhopal, provided that the government of India submits a letter supporting such a claim to the New York court by June 30, 2004.
- June 28, 2004**: The Indian Government submits the 'no objection' certificate to Judge Keenan in New York, writing that "pursuant to the polluter-pays principle, recognized by both the United States and India, Union Carbide should bear all of the financial burden and cost for the purpose of environmental clean-up and remediation. The Union of India and the State Government of Madhya Pradesh shall not bear any financial burden for this purpose."
- August 3, 2004**: Alok Pratap Singh files against UCIL in the MP High Court on the basis of factory site contamination.
- March 30, 2005**: An interim order directed at the government of India ordered them to create an expert committee on remediation.
- June 2005**: Pre-remediation work is begun by Ramky Pharma City Ltd, which exposed unprotected women and children workers to dangerous chemicals, and churned up more chemicals into the air. At least two gas survivors were hospitalized.
- October 5, 2005**: Judge Keenan dismisses the claims of the plaintiff for compensation for injuries and damage to property, as well as on-site and off-site remediation.
- October 29, 2005**: Following presentation of evidence concerning the reckless clean up activities, the MP High Court directs four NGO's – survivor organizations and Greenpeace India - to participate in the review and remediation of the work of repacking the temporarily contained waste.



#### **ENSURING CORRECT LIABILITY:**

The government of India has taken the position that "The Union of India and the State Government of Madhya Pradesh shall not bear any financial burden for this purpose." Contamination affected plaintiffs are seeking to have all costs for a comprehensive clean-up be borne by Union Carbide as part of the relief requested in the New York litigation. If such relief should be granted, then Union Carbide will have to pay for the proper disposal of the aboveground wastes, dismantling of the plant's component units, decontamination of soil below the factory as well as the subsurface groundwater aquifer.

However, if the government of India and/or the Madhya Pradesh authorities were to undertake remediation measures at the Bhopal plant, then the government of India would be very publicly repudiating its official position that it will not bear any costs for environmental remediation. Survivors would not necessarily be entitled to assert claims based on recovery of cleanup costs. Apart from any practical problems of the planned measures themselves, this would risk transferring a substantial portion of Union Carbide's liability for having caused this environmental problem onto the shoulders of the government of India and, of necessity, the taxpayers of India.

Union Carbide should also be held liable for the long-term health effects and damage to property caused by off-site contamination, and the government of India should intervene to encourage this resolution, so that those damaged by the water contamination can be supported and compensated by Union Carbide.

**WE DEMAND the government of India support the survivors' lawsuit in American courts by filing amicus curiae briefs that substantiate their claims and basis in Indian law.**

**This padyatra is our march for justice and dignity until our last breath. 21 years is enough!**

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