



May 7, 2007

Amnesty International thanks the Business & Human Rights Resource Center (BHRRC) for soliciting a response from Dow Chemical Company (Dow) to [our letter](#) to the Securities and Exchange Commission dated April 12, 2007, and appreciates the opportunity to provide further clarification about our concerns.

In [its response](#) to the BHRRC, Dow fails to substantively address the points raised by Amnesty International and the shareholder proponents of the Bhopal resolution, in particular, the company never acknowledges the concern that the Bhopal legacy has proved to be an impediment to the company's expansion in India. Dow's statement contains several misrepresentations and further illustrates the company's commitment to cloud the facts about Bhopal in their effort to avoid liabilities connected to the disaster.

1. MISREPRESENTING THEIR LIABILITIES

Dow notes their oft-repeated position of zero liability stating, "Dow never owned or operated the plant site involved with the Bhopal tragedy and, as such, has no responsibility or liability for the plant site."

Dow's defense may be semantically logical, but in the opinion of many experts including Amnesty International, it is not legally sound. In 2001, Dow acquired the Union Carbide Corporation (UCC), which it still wholly owns. In India at the time of the Bhopal disaster, UCC operated through Union Carbide India Limited (UCIL). It must be noted, however, that UCC owned more than a 50% stake in the Bhopal plant, and as such exercised majority control over its voting shares, thereby giving UCC extensive management and operational control over UCIL. As detailed in the 2004 Amnesty International Report, *Clouds of Injustice*, decisions made by UCC management contributed to the leak: UCC decided to store quantities of the "ultra-hazardous" Methyl Isocyanate (MIC) in the Bhopal plant in bulk, but did not equip the plant with the corresponding processing or safety capacity; UCC transferred technology that entailed operational risks and did not apply the same standards of safety in design or operations in Bhopal as it had in place in the USA; and months before the disaster, UCC was warned of the possibility of a runaway reaction. Furthermore, it was decisions by UCC (and not UCIL) after the leak which exacerbated the suffering connected to the disaster: UCC's response to the disaster was at first to downplay the toxic nature of MIC by claiming it was harmless. It then withheld vital information about its toxicology as well as the identity of reaction products that were released (which it continues to do to this day). Subsequently, UCC sought to stonewall the legal process by raising complex legal issues, claiming that UCC was not a transnational company, and further denying the dangerous nature of MIC. UCC refused to pay interim relief to victims, whom it tried to discredit. It

also refused to appear in court in a criminal case where charges of culpable homicide have been levied, and is today considered an “absconder” from the Bhopal District Court and the Supreme Court of India.

There are still liability cases pending against Dow connected to its fully-owned subsidiary, UCC. Selling off UCIL, which Dow often points to in its defense, has not fully absolved the company of these risks.

2. MISREPRESENTING THEIR INTERACTIONS WITH THE INDIAN GOVERNMENT

Dow writes, “It is common for companies to meet with government leaders wherever they do business and have plans to grow... to discuss challenges and opportunities related to investment.”

This is a disingenuous attempt to lump all kinds of government lobbying together. Clearly, Amnesty’s comment to the SEC on Dow’s interaction with the government is not about the fact that Dow is meeting with government leaders, but that they appear to be trying to bypass the Indian Courts by secretly negotiating with the Executive Branch. Regarding the litigation in India which Dow refers to in the letter – namely, a Madhya Pradesh High Court case regarding cleanup of the toxic abandoned factory site in which the Indian government has filed a brief asking for a \$22 million deposit toward cleanup costs – Dow has never disclosed this litigation in their 10-K and has always claimed that it is not material. Further to that, Dow has always publicly claimed (as they do here) that India is a growth region, and never disclosed to shareholders the real risks posed to their expansion there by the Bhopal legacy. The letter between CEO Liveris and Ambassador Sen calls both those claims into question and in their response, Dow continues its longstanding strategy of denial and half-truths. The questions for shareholders remain, if this liability is not material, why doesn’t Dow let the courts do their job? If Dow seriously believes that their fully-owned subsidiary, UCC, is absolved, why don’t they cooperate with the Indian courts by producing UCC in court, where they are considered absconders from justice for failing to face criminal charges?

3. MISREPRESENTING WHAT AMNESTY INTERNATIONAL IS “AWARE OF”

Dow states, “Amnesty International USA is well aware that the Bhopal site was never -- and is not now -- a Dow plant. They are also aware that the State Government of Madhya Pradesh owns the former plant site and that the State Government has the authority and the ability to resolve any ongoing matters related to Bhopal.”

It is worth noting that Dow Chemical has never bothered to directly discuss Bhopal with Amnesty International. The company has never officially responded to our report issued in 2004, nor have they seriously attempted to engage directly with us to resolve our concerns. Based on this response to the BHRRC, it seems possible that Dow has never read *Clouds of Injustice*, which CLEARLY and DEFINITELY outlines why (despite the fact that the Bhopal plant site is not currently owned by Dow) the company has very

specific outstanding responsibilities in Bhopal, on both moral and legal grounds. These include ensuring that UCC:

- effectively and promptly decontaminates the Bhopal factory site, cleans up the groundwater and removes the stockpiles of toxic and hazardous substances left by the company when they abandoned the site;
- cooperates fully with those who are assessing the long-term health consequences of the gas leak and of the hazardous and toxic substances left on site since 1984;
- promptly makes public all information it has on all reaction products released on the day of the gas leak and full information regarding their toxicity and impact on people and the environment; and
- appears before the Bhopal Court in the criminal case.

Furthermore, Amnesty has demanded that Dow provide promptly full reparations, restitution, compensation and rehabilitation for the continuing damage done to people's health and the environment by the ongoing contamination of the site.

The Amnesty report is also clear about the responsibilities of the Indian Government related to Bhopal. The Indian Government has the primary responsibility for resolving ongoing matters in Bhopal, and technically has the authority to do so. As the Amnesty report describes, part of that responsibility is ensuring UCC/Dow are appropriately held to account. We see this at work in the current lawsuit described above, which as we point out, Dow is trying to extra-legally circumvent.

4. FAILURE TO IMPLEMENT CORPORATE SOCIAL RESPONSIBILITY

Regardless of the fact that governments are ultimately responsible for making sure companies address contamination and social justice issues, this is not the same as saying that companies do not have responsibilities in the first place, as Dow seems to claim in their response. In fact, the Universal Declaration of Human Rights calls on "every organ of society" to protect and promote human rights – including companies – and there is an increasing trend towards placing explicit human rights obligations on business enterprises. Furthermore, numerous international environmental agreements establish obligations for private non-state actors not to cause serious harm to the environment that endangers human life or health, particularly in the context of toxic wastes.

In the corporate context, the idea of voluntarily meeting social and environmental obligations before being forced to by a government is known as Corporate Social Responsibility (CSR). Most leading companies are beginning to take CSR seriously, seeing it as a risk management tool, as a way to ensure license to operate, to build public trust and brand loyalty. Many companies even claim to do it simply because it is the right thing to do. According to the company's website, "Corporate Social Responsibility at Dow is translated into our commitment to our employees, the communities we operate in, the products we make and our commitment to ethical behaviour." Furthermore "Dow people must conduct business according to the highest ethical principles. " Ethics would

seem to dictate placing respect for human life above a profit motive. Dow makes claims that they are socially responsible – but where is the evidence of this in Bhopal?

5. FAILURE TO COMPREHEND THE SCALE OF THE BHOPAL TRAGEDY AND DOW'S ROLE IN IT

Despite refusing any liability, Dow acknowledges that “What happened in Bhopal with the Union Carbide India Limited plant in 1984 was a terrible tragedy. The fact that the site remains without remediation adds to the tragedy that occurred.”

More accurately, what happened in Bhopal with the pesticide plant owned and operated by UCC in 1984 was a terrible tragedy, one which could have been prevented and one that continues to this day, affecting more than 100,000 people. The fact that the site remains without remediation is largely Dow's choice to hide from its inherited responsibilities at the expense of thousands of lives. That Dow knows the chemical makeup of the toxins, but refuses to disclose them to victims so that they can receive adequate medical treatment, adds to this tragedy. Dow has committed vast resources to perpetuating their version of this tragedy, investing millions in semantic sidestepping. While people are dying, Dow has shunted their responsibilities and looked to others to clean up their mess.

In summary, Amnesty International remains concerned about Dow's failures to disclose information about Bhopal and maintains its request to the SEC for investigation. We call on the shareholders of Dow stock to consider these issues seriously and to support item number 4 on the Dow Chemical 2007 Proxy Statement, which requests company management to report by October 2007, at reasonable cost and excluding confidential information, descriptions of any new initiatives instituted by management to address specific health, environmental and social concerns of Bhopal, India survivors.

For further information on the Bhopal disaster, please download the full Amnesty International report, *Clouds of Injustice*, at:
<http://www.amnestyusa.org/business/bhopal.pdf>