

June 17, 2010

Shri Jairam Ramesh
Minister of State (Independent Charge)
Ministry of Environment & Forests
Paryavaran Bhawan
CGO Complex
Lodhi Road
New Delhi – 110 003

Dear Jairam,

We are writing to you in the context of the Bhopal gas disaster and the outstanding issue of removal of toxic waste from the factory and in addition, the matter of fixing liability on the company for contamination and health impacts of this waste.

Agenda 1: Recognize the problem of dangerous contamination of UCC factory

Last November, CSE had visited the Union Carbide factory to collect samples of sludge and water. You will recall, we had sought permission from you to conduct this laboratory analysis and you had very kindly facilitated the collection of samples, which we did jointly with the officials of the Central Pollution Control Board (CPCB). On analysis in our laboratory, my colleagues detected unacceptably high levels of heavy metals and pesticides. More worrying, we detected the same toxins in the groundwater and drinking water samples we collected some 3 kms from the factory. The toxins in the groundwater were at lower levels, but this does mean that people in these areas (often poor and often victims of the gas accident) are exposed to small levels of toxins in their drinking water, which leads to chronic and deadly exposure. We believe this situation is unacceptable and must be resolved immediately. It must also be noted that the DRDE report (which is often cited by government to claim that the site is not contaminated) looks at acute and not chronic toxicity.

We are enclosing a copy of our laboratory study as well as *Down to Earth* for further details of our findings. Since then, as you know, the CPCB has also done its analysis of soil samples, which it had collected from the same sites. The CPCB analysis also finds very high levels of contaminants – in many cases, even higher than what we had detected. It must also be noted that the quantum of toxins found varies between CSE and CPCB, but this is easily explained. The fact is that we collected different samples of soil and sludge from the same site. In such a situation, the quantum of contamination is bound to be different in different samples. But the bottom line is that we both found the same chemicals – pesticides and heavy metals – and we both found them at unacceptably high levels.

It is also important to note that the chemicals we have found -- mercury and chromium -- or pesticides -- carbaryl, aldicarb, lindane and chlorinated benzene compounds -- were either used in manufacture when the factory was in operation or manufactured for sale. While preparing the protocol for the study, my colleagues had worked hard to understand the working of Union Carbide. This is important for two reasons: One, we were able to find contamination because we knew what to look for. And two, previous studies did not find contamination because they were looking for different (statutory) toxins.

In this situation, it is important and indeed urgent that government does not deny the problem of contamination of the UCC factory and instead focuses on the urgent task of site remediation.

Agenda 2: Organize urgent site remediation (not just disposal of stored waste)

In all this it is important to note that resolution of this matter will require, not just the disposal of some 390 tonnes of stored waste, but cleaning up of the entire 35-odd ha Union Carbide site. The task at hand will involve serious and urgent site remediation, including the removal of soil and contaminated layers (wherever needed) as well as cleaning the deep aquifers. The clean up of toxic waste will be expensive and difficult but it must not deter us. The factory is a source of serious contamination and health risk for large numbers of inhabitants of Bhopal. The GOM must expedite this work and must supervise it closely.

Agenda 3: Pursue and establish the matter of liability of Dow Chemicals

The matter of liability of Dow Chemicals in this case must not be underestimated or brushed aside. This matter has not been settled in the earlier cases before the Supreme Court, which relate to the gas disaster. This waste relates to the factory when it was in operation. Dow Chemicals, which bought over the assets of Union Carbide, cannot deny liability now. It is also important to consider that the remediation of the site will be expensive and that the company responsible for the problem must be required to pay full costs of clean-up and health impacts.

This issue is similar to what US President Barack Obama faces while dealing with British Petroleum's liability in the Gulf of Mexico oil spill. Under the current US law, BP's liability for damages because of an oil spill is capped at US \$75 million, unless the government can prove regulatory misconduct or negligence. President Obama responding to the anger of his people has insisted that BP must pay much higher damages – already some US\$ 20 billion has been committed to compensate people and the environment without proving anything. Therefore, the Indian government cannot be seen as hiding behind legalise to protect Dow in the Bhopal contamination case.

As you know, this matter is before the Madhya Pradesh High Court and there is pressure on the government to withdraw or weaken its earlier affidavit, which asks Dow to deposit Rs 100 crore for toxic waste disposal and health impacts. Currently, the Union government has been taking a rather indifferent position on this case. Furthermore, it has never taken up the matter directly with Dow about payment for these damages. We believe this must be done. Clearly, our government like that of the US, is cognizant and capable of protecting the interest of its people.

I look forward to hearing from you on this matter and please do let us know if you need any further clarification or information.

With my very best wishes,

Yours cordially,

Sunita Narain