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Government of India
Ministry of Chemicals and Fertilizers
Department of Chemicals and Petrochemicals

Please refer to Prime Minister's Office U.O. No. 32081/C/09/2006-ES.II dated the 26th June,2006, seeking the comments/advice of the Department of Chemicals and Petrochemicals on the legacy issue of M/s Dow Chemicals.

2. The comments of the Bhopal Cell, Department of Chemicals and Petrochemicals are as follows:

- (iii) In the W.P. No. 2802/2004 filed in the High Court of Madhya Pradesh, Jabalpur, Dow Chemical Company is Respondent No. 4. The Dow Chemical Company has filed an application in the High Court of Madhya Pradesh, Jabalpur dated 10th September,2004, submitting "that pursuant to the order passed by this Hon'ble Court dated 3rd August,2004 respondent No. 4 has been served with the notice and the copy of the writ petition in USA. With utmost respect and humility, the respondent No. 4 would submit at the outset that due to gross misrepresentation of material fact and concealment of the true facts, the writ petitioners erroneously caused this Hon'ble Court to issue and serve notice of the writ petition to the respondent No.4, which does not lie in the jurisdiction of this Hon'ble Court and as such the order deserves to be recalled". The Dow Chemical Company had in its prayer requested the High Court "the name of the respondent No. 4 may be ordered to be struck off from the array of respondents and further the writ petition as against the respondent No. 4 be dismissed in its entirety with costs."
- (iv) The Government of India in its affidavit filed on 10th May,2005, has petitioned the High Court of Madhya Pradesh, Jabalpur in W.P. No. 2802/2004 to direct Dow Chemicals Company, USA to deposit an amount of Rs.100 crores as advance for environmental remediation caused by the toxic wastes lying at the UCIL factory site in Bhopal

3. However, the High Court of Madhya Pradesh has not issued any orders to strike off Dow Chemicals Company from the list of respondents, till date, and it continues to be respondent No. 4 in the W.P. mentioned above.

Yashvir Singh
(Yashvir Singh)

Deputy Secretary to the Govt. of India.

Ms. Vimi Mahajan, Director, Prime Minister's Office, South Block, New Delhi.

Department of Chemicals and Petrochemicals U.O. No.21/24/2006-B.Cell dated the 27th June,2006

28/6



Medical
Research
ICMR
wants to
dissociate
from study

Government of India
Ministry of Chemicals and Fertilizers
Department of Chemicals and Petrochemicals

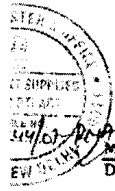
Prime Minister's Office may please refer to their I.D. No.320/31/C/9/2006-E.S-2 dated 9th June,2006, regarding the proposed action taken for continuation of medical research for studying the long term effects of the gas on the survivors of Bhopal Gas Tragedy and their children.

2. Secretary, Department of Chemicals and Petrochemicals had written separate D.O. letters to the Secretary, Department of Health and the Director General, Indian Council of Medical Research, New Delhi, requesting them to consider a proposal submitted by the Centre for Rehabilitation Studies, Bhopal for a budget support of Rs.1.23 crore per annum to meet the requirements of research activities and the salaries and allowances of the personnel employed with the Centre (Copies enclosed for reference as Annexure-I and II). The response received from the D.G., ICMR is enclosed as Annexure-III. It appears from this response that ICMR wants to dissociate itself from this proposal, which logically falls in its domain.

3. It may also be mentioned that the Centre for Rehabilitation Studies is presently functioning under the Bhopal Gas Tragedy, Relief and Rehabilitation Department, Government of Madhya Pradesh. The PMO is requested to take up the proposal of CRS with the Department of Health and the ICMR so that long term research can be conducted on the Bhopal gas victims. The Department of Chemicals and Petrochemicals has no provision in its Budget for such an activity. The ICMR may be provided additional funds to take up this project and Department of Health may support it.

4. A copy of the minutes of the first meeting of the recently constituted Coordination Committee for implementation of various schemes/programmes for the welfare of Bhopal Gas Victims being implemented by the Central and State Governments is also enclosed as Annexure-IV, wherein this issue was discussed, for information of PMO.

(Signature)
(Yashvir Singh)
Deputy Secretary
(Tele:23387761)



Ms Vini Mahajan, Director, PMO, South Block, New Delhi.
Deptt. of C&PC I.D. No. 21/7/2006-BC dated 5th July,2006.

With respect to 'A', we may call for comment from HRF. 70 44
25/7
ES-2
ES-B Section
The file is placed below for.
25/7
25/7

Most Immediate
By Special Messenger

Ministry of Chemicals & Fertilizers
Department of Chemicals & Petrochemicals

Subject:- Bhopal Gas Tragedy -updated status- reg.

Please refer to the Prime Minister's Office U.O. No.320/31/C/9/2006-ES.II dated 30th November, 2006, requesting for an updated status including the issue of removal/disposal of Toxic Wastes lying at the UCIL Plant site at Bhopal.

2. An updated brief note on the status of the toxic wastes lying at the UCIL Plant site at Bhopal, based on the decisions taken by the Task Force set up by the High Court of Madhya Pradesh in its ninth meeting held on 16th October, 2006 at Hyderabad is enclosed as Annexure-I. A copy of the minutes of this meeting is also appended with the brief note, for information of the PMO.
3. The second meeting of the Coordination Committee set up by the Department of Chemicals & Petrochemicals was held on 5th October, 2006 under the chairmanship of Joint Secretary (C&PC). A copy of the follow-up action taken in pursuance of the decisions taken in the first meeting and the further decisions taken in the second meeting are enclosed herewith as Annexure-II. A letter written to the Chief Minister of Madhya Pradesh by the Minister for Chemicals & Fertilizers and Steel on 30th November, 2006, in this regard is also enclosed for reference.
4. This issues with the approval of Joint Secretary(C&PC).

(Yashvir Singh)
(Yashvir Singh)
Deputy Secretary

Encls. as above (4 Nos.)

Ms. Vini Mahajan, Director, Prime Minister's Office, South Block, New Delhi.
Department of C&PC U.O. No. 21/7/2006- B. Cell dated the 8th December, 2006.

perusal

(Signature)
19/12



Annexure - I

Latest status on the issue of removal/ disposal of toxic wastes lying at the Union Carbide Plant site

For coordinating the overall environmental remediation at the Union Carbide Plant site at Bhopal, a Task Force has been constituted under the Chairpersonship of Secretary (C&PC), on the directions of the High Court of Madhya Pradesh, which is monitoring the removal/ disposal of the toxic wastes in the Writ Petition No. 2802 of 2004 (Alok Pratap Singh vs. Union of India & others). The first meeting of the Task Force was held on 31st May, 2005, at New Delhi, followed by review meetings. The last (ninth) meeting of the Task Force was held on 16th October, 2006 at Indian Institute of Chemical Technology (IIT), Hyderabad. The major decisions taken by the Task Force in this meeting were as follows:

- (i) The final recommendations of the Technical Sub-committee were adopted and it was concurred that except for Lime Sludge all the 5 types of toxic wastes lying at the UCIL plant site would be sent for incineration to the incinerator at Ankleshwar, Gujarat. The Lime Sludge would be taken to the TSDF at Pithampur and would be put in the SLF, after treatment.
- (ii) The incineration would be carried out under the supervision of the Madhya Pradesh Pollution Control Board (MPPCB) and Gujarat State Pollution Control Board, in accordance with the guidelines issued by Central Pollution Control Board (CPCB).
- (iii) The Lime Sludge from the UCIL plant site would be placed in a separate hole at an identifiable location at the Transportation, Storage and Disposal Facility (TSDF) at Pithampur, without mixing it with any other toxic waste.
- (iv) The Government of Madhya Pradesh may seek the permission of the High Court for construction of a memorial at the UCIL plant site before taking further action in this regard.
- (v) The EFC note to be prepared by the State Government for funding the activities covered under the Roadmap for submitting to the Planning Commission may be prepared in consultation with the MPPCB.

A copy of the minutes of the ninth meeting of the Task Force is placed below as Appendix.



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2007

MOST IMMEDIATE
BY SPECIAL MESSENGER

Government of India
Ministry of Chemicals and Fertilizers
Department of Chemicals and Petrochemicals

Subject: W.P. No. 2802/2004 being heard in High Court of Madhya Pradesh, Jabalpur filed by Sh. Alok Pratap Singh vs. Union of India and others - regarding.

Director, P.M.O. may please refer to her telephonic conversation with the Joint Secretary, Department of Chemicals and Petrochemicals on the subject cited above.

2. In this connection, please find enclosed herewith a note on the issue of application submitted by the Department of Chemicals and Petrochemicals in the High Court of Madhya Pradesh, Jabalpur wherein the High Court has been requested to ask the Respondent No. 4 to 6 to deposit an advance of Rs.100 crore with the High Court for the environmental remediation of the former UCIL plant site at Bhopal.

3. This issues with the approval of Secretary(C&PC).

Yashvir Singh
(Yashvir Singh)
Deputy Secretary
(Tele: 23387761)

Encl.: as above.

✓ Ms. Vini Mahajan, Director, PMO, South Block, New Delhi.
Department of C&PC I.D. No. 21/43/2004-B.Cell dated 05.01.2007.

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I



Retained
note by
Mei.

Note on the issue of application of the Department of Chemicals and Petrochemicals filed in the High Court of M.P. in W.P. No.2802/2004 requesting to direct Respondent No.4 to deposit Rs.100 crore as advance for environmental remediation of former UCIL Plant Site at Bhopal.

This pertains to Writ Petition No. 2802/2004 filed in the High Court of Madhya Pradesh, Jabalpur (**Annexure-I**) by Shri Alok Pratap Singh vs. Union of India and others in July, 2004, regarding removal of toxic wastes and remediation of the former UCIL plant site at Bhopal. The reliefs sought by the Petitioner were as follows:

← July 2004
Alok Singh

- (i) To hold DOW Chemical Company responsible for causing environmental pollution and pass suitable orders against the company to assume the undischarged liabilities of Union Carbide for continuing and long-term impact of the disaster.
- (ii) Issue an appropriate Writ in the nature of Mandamus, and/or pass suitable order or directions against the Respondents 1 to 3 to perform their statutory obligations and duties under the Environmental Laws of India.
- (iii) Direct the respondents to ensure immediate clean-up of Union Carbide factory site at Bhopal and to take all remedial measures for removal and safe disposal of entire toxic waste from the area.
- (iv) To direct DOW Chemical to provide for long term medical care, research and monitoring of ill affects of pollution of land and water in and around factory site at Bhopal.
- (v) In the alternative, if this Hon'ble Court come to a conclusion that this issue of environmental pollution and its remediation is also covered under the settlement with Union Carbide, then it be pleased to hold that Respondent 1 has failed to discharge its duties and responsibility to act as "Parens patriae" for the gas affected victims and address the issue of environmental pollution as per the provisions of *Bhopal Gas Disaster (Processing of Claims) Act, 1985*, and consequently direct the said respondent to immediately take all necessary steps in terms of reliefs claimed herein above.
- (vi) Grant any other relief, which this Hon'ble Court deems just and proper in the facts and circumstances of the case."



2. It may be mentioned here that in the original Writ Petition the following 4 Respondents were impleaded by the petitioner in this matter:

- i) Respondent No. 1. - Union of India through Ministry of Environment and Forests. Later on the Department of Chemicals and Petrochemicals was substituted as Respondent No. 1.
- ii) Respondent No. 2 - Government of Madhya Pradesh through its Chief Secretary.
- iii) Respondent No. 3 - Madhya Pradesh Pollution Control Board through its Chairman.
- iv) Respondent No. 4 - Dow Chemical Company (formerly Union Carbide Ltd).

3. The High Court of M.P. was requested by the Counsel of the fourth Respondent, i.e. Dow Chemical Company vide their application (I.A. No. 3334-W of 2004) dated 14th September, 2004 to implead M/s Union Carbide Corporation, USA and Eveready Industries India Limited as Respondents. The High Court permitted the request. Hence, it was on the request of Dow that UCC, USA and Eveready Industries India Limited were also included as Respondents No. 5 and 6 respectively, by the High Court. The relevant extracts of the order of the High Court are enclosed as **Annexure-II**, which read as follows:

"In view of the aforesaid submissions made by the fourth Respondent, the Petitioner seeks leave, without prejudice to implead M/s Union Carbide Corporation, USA and Eveready Industries India Limited as Respondents. The oral request is permitted as this is a PIL."

4. Further, it is pertinent to mention here that in the same application dated 14th September, 2004 Dow Chemicals Company had also requested the High Court for deleting its name from the array of parties on the ground that it had nothing to do with the subject matter of the Writ Petition. The relevant extracts of the observations of the High Court, on this application, as contained in their order dated 25th January, 2005 read as follows:

"The learned Counsel who appeared for the fourth respondent during the several hearings have always made it clear that their appearance is without pre-judice to the contention of the fourth Respondent that it has not subjected itself to the jurisdiction of this Court by entering appearance in the matter and any submissions made are



liability
established
by HC of
company

only to assist the Court without subjecting itself to the jurisdiction of this Court."

The High Court is yet to issue any orders/directions on the issue of deleting the Respondent No. 4 from the array of the parties in this matter.

5. The High Court of Madhya Pradesh vide their order dated 30th March, 2005 constituted a Task Force for implementation of Toxic Waste removal/destruction as follows:

- (i) Secretary, Department of Chemicals and Petrochemicals, Government of India.
- (ii) Principal Secretary, Bhopal Gas Tragedy Relief and Rehabilitation, Bhopal.
- (iii) Chairman, M.P. Pollution Control Board, Bhopal.
- (iv) Expert to be nominated by the National Environmental Engineering Research Institute, Nagpur.
- (v) Expert to be nominated by the Indian Institute of Chemical Technology, Hyderabad.
- (vi) Technical Member nominated by Central Pollution Control Board.

The High Court also directed that member no. (ii) i.e. Principal Secretary, Bhopal Gas Tragedy, Relief and Rehabilitation Department, Bhopal will be the Co-coordinator of the Task Force and he shall take all immediate steps to commence the work.

Further, based on the suggestion of the then Chairman, Madhya Pradesh Pollution Control Board that Dr. K.P. Nyati may also be appointed as one of the members of the Task Force, the High Court vide its order dated 13th May, 2005, reconstituted the Task Force by the following addition:

- (vii) Dr. K.P. Nyati, Head of Environmental Management Division, Confederation of Indian Industry, New Delhi.

6. The High Court had been pleaded by the Petitioner that "the polluting industry is liable to compensate for the environmental pollution and is bound to take all necessary measures to remove contaminated material from the factory site at Bhopal, the cost of restoring the environmental degradation has to be on the polluter, who is liable to reverse the damaged ecology". Further, Rule 16 of Hazardous Wastes (Management and Handling) Rules, 1989, enacted under the Environment Protection Act, 1986, mandates as under:

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"The occupier and operator of a facility shall also be liable to reinstate or restore damaged or destroyed elements of the environment at his cost, failing which the occupier or the operator of a facility, as the case may be, shall be liable to pay the entire cost of remediation or restoration and pay in advance an amount equal to the cost estimated by the State Pollution Control Board or Committee. Thereafter, the Board or Committee shall plan and cause to be executed the programme for remediation or restoration. The advance paid to State Pollution Control Board or Committee towards the cost of remediation or restoration shall be adjusted once the actual cost of remediation or restoration is finally determined and the remaining amount, if any, shall be recovered from the occupier or the operator of the facility".

The High Court was keen that the remediation effort should be taken up immediately by the Central and the State Governments without being engaged in prolonged debate as to who is responsible for removal/destruction of such toxic waste. In this context, an application was filed by the Department of Chemicals and Petrochemicals on 10th May, 2005 in the above mentioned PIL requesting the High Court of Madhya Pradesh that in terms of the provisions of the Hazardous Wastes (Management and Handling) Rules, 1989, it may direct Respondent Nos 4 to 6 to deposit an advance of Rs.100 crore for environmental remediation.

7. The High Court vide its order dated 13th May, 2005 (Annexure-III) observed as follows:

"Instead of complying with the order dated 30.3.2005 or taking concrete steps the Central Government has merely filed an application (IA No. 4043/2005) seeking a direction to Respondents 4 to 6 to deposit a sum of Rs.100 crores for environmental remediation. In the said application, the Central Government has stated that as the financial liability of remediation/restoration is that of the polluter under the Hazardous Waste (Management & Handling) Rules, 1989, enacted under the Environment Protection Act, 1986, it is for the Respondents 4 to 6 to bear the cost.

In our earlier order dated 30.3.2005, we have already referred to the urgent need to take up the clean up work and pointed out that the question as to who is responsible for the clean up, cannot over shadow the question of clean up itself."

Chemical
application
May 2005
Rs. 100
Crore.

Who is
responsible
cannot
over shadow
the
clean up.

8. As far as remediation of the UCIL plant site is concerned, the Task Force constituted by the High Court of M.P. has been periodically monitoring the progress made for the removal/disposal of the toxic wastes lying in and around the former UCIL plant at Bhopal. The Task Force constituted a Technical Sub Committee from amongst its members who recommended that the stored toxic waste may be removed/disposed by sending the approximately 40 MT of Lime Sludge to the Transportation, Storage and Disposal Facility (TSDF) at Pithampur, near Indore and the other approximately 350 MT of the toxic wastes may be incinerated in the incinerator at Ankleshwar, Gujarat. The last meeting of the Task Force was held on 16th October, 2006 and in pursuance of the decisions taken in this meeting the Government of Gujarat was requested to convey the permission to incinerate the above mentioned toxic wastes at Ankleshwar, Gujarat and also provide the financial estimates for using the incineration facility. The Government of Gujarat has conveyed its permission to the Madhya Pradesh Pollution Control Board, vide their letter dated 26th December, 2006 and the financial estimates have also been provided by M/s Bharuch Enviro Infrastructure Limited, Ankleshwar vide their letter dated 6th December, 2006, addressed to the Member Secretary, Gujarat Pollution Control Board. The next date of hearing in the High Court of Madhya Pradesh is due on 1st February, 2007, wherein the estimates would be informed to the High Court, as directed by it. The Department of Chemicals and Petrochemicals is making provision for its share for the removal/disposal of the above mentioned waste, in the non-plan budget of 2006-07.

9. It is clear from above that Dow has already pleaded its position before the High Court that it is not concerned with the subject matter of this Writ Petition and may therefore, be removed from the array of parties and instead respondents no. 5 and 6 may be impleaded. The High Court has yet to adjudicate on the issues of which amongst respondents no. 4 to 6 is the polluter and the extent of the liability towards environmental remediation. Thus, it is clear that the Government of India has not pre-judged the issue of 'legal liability' as the High Court has to adjudicate on this issue and their request to the High Court of M.P. is as per the provisions of the Hazardous Wastes (Management and Handling) Rules, 1989, without any prejudice to anyone.

10. The representative of Dow Chemicals had visited the Department of Chemicals and Petrochemicals and was advised accordingly to put forth their stand in the High Court of Madhya Pradesh, as there appears to be no valid ground for the Government of India to withdraw or modify its application dated 10th May, 2005, filed in the High Court of Madhya Pradesh in W.P.

MC has to
Judge on
liability

No. 2802/2004, since the issue of deleting the name of Dow Chemical Company is sub judice.

11. As far as the offer of Shri Ratan Tata suggesting to lead and fund funding for the remediation of the site so that it is made safe both above and below the ground is concerned, it may be made clear that the matter is sub-judice and the High Court of Madhya Pradesh is itself monitoring the entire process of environmental remediation. It has constituted a Task Force which is regularly apprising the High Court about the progress made in this direction, based upon the orders and directions issued by the High Court from time to time. Moreover, it may be mentioned here that as per the provisions of Hazardous Wastes (Management and Handling) Rules, 1989, it is the polluter who is liable for meeting the cost of environmental remediation. It may be appropriate that such an offer is submitted to the High Court of Madhya Pradesh by the individual/agency making the offer and seek directions thereon.



Chidambaram
note on
RT / Montek
site Remediation
fund.

Ministry of Finance

I have the following comments to make on the note submitted by Deputy Chairman, Planning Commission.

2. Dow Chemicals: Shri Ratan Tata has written to me that we should set up a Site Remediation Fund or Trust to clean up the site at which the Bhopal gas tragedy took place. He feels that responsible corporates in the private sector and in the public sector could contribute to this initiative and that the Tata's will be willing to spearhead and contribute to such an exercise.

I think we should accept this offer and constitute a Site Remediation Trust under the chairmanship of Shri Ratan Tata and including executives from the private sector and the public sector.

No. 3. Infrastructure Fund: Mr. Charles Prince, Chairman and Chief Executive Officer of Citigroup has written to me that Citigroup is keen to embark on the establishment of up to US\$ 5 billion multi asset fund, with the initial target of US\$ 2 billion. The Fund will focus on equity and mezzanine participation in infrastructure investments. On a leveraged basis, the initial US\$ 2 billion as capital should enable the Fund to pursue up to US\$ 10 billion of infrastructure assets.

Mr. Sanjay Nayar, CEO Citigroup is likely to meet me soon to discuss the next steps.

In my view, we should accept the offer and go ahead and encourage Citigroup to establish such a fund.

contd...





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File No 6200/FM/06-1

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भारत
नई दिल्ली 110001
FINANCE MINISTER
INDIA
NEW DELHI-110001

November 10, 2006

Dear and Respected Prime Minister

I recently visited the United States from October 22 - 26, 2006. The main purpose of the visit was to review issues with the Indo-US CEO Forum in New York. I also used the occasion to meet with investors in San Francisco and New York and deliver a talk at Stanford University. I enclose herewith the detailed tour report for your information.

With regards,

Yours sincerely,

(P. CHIDAMBARAM)

- A committee report
come from Dy. Secy, A.C.
+ C.J.M.
- Can they be put up to PM?

Bans
14/11
3/10/11

Dr. Manmohan Singh
Hon'ble Prime Minister
South Block
New Delhi.

Encl: a/a.

Ack. being put up separately

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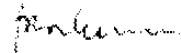


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No. 8 Bank Branches: I have raised the matter of allowing Indian banks to open more branches in United States with several authorities in the US. I have requested the Ambassador to follow up the matter with the Federal Reserve and the Treasury in the US. I have gently hinted to Citi Bank that their application for branches will, if recommended by RBI, be operationalised but we expect that, reciprocally, some of our banks (SBI, ICICI) should be allowed to open more branches in the US.

2. On the other points, I am in agreement with the Deputy Chairman, Planning Commission.


(P. CHIDAMBARAM)
Finance Minister
05.12.2006

PRIME MINISTER

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Ms.