

University of Texas at Austin

Graduate Student Assembly

Resolution in Support of Disassociation of the University of Texas at Austin from the Dow Chemical Company.

WHEREAS, in recent years, issues of corporate ethics and responsibility have risen to the forefront of national and international attention¹; and

WHEREAS, on December 3, 1984, the world's worst industrial disaster occurred in Bhopal, India, when a Union Carbide Corporation chemical plant leaked 27 tons², of lethal methyl isocyanate gas, killing more than 7,000 people within three days³, causing over 15,000 deaths since⁴ and poisoning more than 500,000 people⁵; and

WHEREAS, at least 120,000 people are chronically ill⁶ and 30 people die monthly from the long-term effects⁷; and

WHEREAS, all six safety systems at the Union Carbide Corporation plant, which could have contained the leak, were inoperative because of Union Carbide Corporation's cost-cutting or neglect^{8,9}; and

WHEREAS, studies published in several peer-reviewed medical journals including Journal of the American Medical Association indicate that some effects of gas exposure - which include increased infant mortality, spontaneous abortion, increased still births, loss of fertility, excessive menstrual bleeding, suppression of lactation, decrease in lung function, airways obstruction, alveolitis, lung fibrosis, long term breathlessness, chronic gastrointestinal symptoms, corneal damage, lesions, chemosis, keratitis, intra-retinal hemorrhage, higher incidence of cataract, and chromosomal aberrations - are being passed on to the children born to gas-exposed parents, increasing the magnitude of the disaster over time^{10,11}; and

WHEREAS, the 1989 financial settlement between Union Carbide Corporation and the India Government for \$470 million did not ultimately absolve Union Carbide Corporation of criminal liability related to the disaster, or environmental liability for contamination unrelated to the 1984 Bhopal disaster¹²; and

WHEREAS, in 1991, India's Central Bureau of Investigation charged the Union Carbide Corporation and several of its officials, including then-CEO Warren Anderson, with criminal charges of culpable homicide and other offenses related to the Bhopal disaster¹³; and

WHEREAS, Union Carbide Corporation and Warren Anderson are currently fugitives from justice due to their refusal to obey the summons of the Chief Judicial Magistrate's court in Bhopal to appear for criminal trial, and their failure to honor the process

of Indian law¹⁴; and

WHEREAS, 20,000 people in the vicinity of the Union Carbide factory continue to be exposed to carcinogenic and mutagenic chemicals abandoned by Union Carbide Corporation at the plant at levels reaching 500 times WHO prescribed limits^{15,16,17}; and

WHEREAS, Union Carbide Corporation and its owner since 2001, Dow Chemical Company, refuses to release all their medical research on the health effects of the gases to treating physicians, calling the information a 'trade secret'¹⁸; and

WHEREAS, although Dow Chemical Company acquired Union Carbide's liabilities along with its assets following its 2001 purchase of the company, and furthermore set aside \$2.2 billion in 2002 to resolve Union Carbide's asbestos liabilities in Texas¹⁹, Dow Chemical Company refuses to address Union Carbide's environmental and criminal liabilities in Bhopal²⁰; and

WHEREAS, 647 University of Texas at Austin students are international students from India,²¹

WHEREAS, the University has significant ties to Dow Chemical Company, which have included at least \$4.4 million in cumulative donations²² from Dow to the University up to June 30, 2003; and

WHEREAS, the University has the obligation to decline the patronage of individuals or institutions absconding from law²³, responsible for systematic human rights violations, and those protecting them²⁴; and

WHEREAS, more than one thousand students and fifty faculty from this university support this resolution, as indicated by the list of signatures attached²⁵; and

THEREFORE BE IT RESOLVED, that the Graduate Student Assembly of The University of Texas at Austin recognizes that Dow Chemical Company has failed to respect one of The University of Texas at Austin's core values, "responsibility" and condemns the contamination inflicted on the people of Bhopal;

BE IT FURTHER RESOLVED, that the Graduate Student Assembly of The University of Texas at Austin writes on behalf of the students of The University of Texas at Austin to Dow Chemical Company stipulating that Dow Chemical Company is in violation of The University of Texas at Austin's core values and that Dow Chemical Company is obligated to address its responsibilities in Bhopal through:
1. complying with the law by submitting its subsidiary, Union Carbide Corporation, for trial in India; and 2. cleaning up the toxins that its subsidiary abandoned in Bhopal, thereby saving lives and ending the ongoing contamination of tens of thousands; and

BE IT FURTHER RESOLVED, that the Graduate Student Assembly of The University of

Texas at Austin publicly states on behalf of the students of The University of Texas at Austin that the University should not accept funds from Dow Chemical Company, or its directly associated foundations, in excess of what they spend to clean up the Bhopal site on an annual basis, until such time as the site has been cleaned to United States Superfund standards; and

BE IT FURTHER RESOLVED, that the Graduate Student Assembly of The University of Texas at Austin requests a meeting of the authors and Graduate Student Assembly representatives with the President of the University of Texas at Austin to write a public letter to Dow Chemical Company regarding this resolution; and

BE IT FURTHER RESOLVED that a copy of the resolution be sent to the Board of Regents of The University of Texas System, the Chancellor of the University of Texas System, President of The University of Texas at Austin, Mr. Bill Powers, Deans of schools and colleges of The University of Texas at Austin, the Board of Directors of Dow Chemical Company, the Corporate Officers of Dow Chemical Company and the Office of the Chief Executives of Dow Chemical Company.

Authors

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Comments

Supported by following registered student organizations at The University of Texas at Austin

Association for India's Development
Amnesty International
Asha for Education
Beta Kappa Gamma
Delta Epsilon Psi National Service Fraternity, Inc.
Delta Kappa Delta
Delta Phi Omega Sorority, Inc.

Environmental Law Society
Hope Student Life
Indian Cultural Association
Indian Student Association
International Student Council
Movimiento Estudiantil Chicana/ O De Aztlan (MEChA)
National Lawyers Guild
No Brand No Empire
Omega Phi Alpha
Pratham
South Asian Business Association
VIBHA

*Supported by more than 1000 students and faculty members from The University of Texas at Austin.

¹ Enron, WorldCom, and Tyco serve as only three examples.

² This figure is quoted both by VR Dhara (Dhara, VR; Dhara, Rosaline. "The Union Carbide Disaster in Bhopal: A Review of Health Effects." *Environmental Health* Sept./Oct. 2002; Vol. 57, No. 5, pp. 391-404 and Ward Morehouse (Morehouse W, Subramaniam MA. *The Bhopal Tragedy: What Really Happened and What it Means for American Workers and Communities at Risk*. New York: Council on International and Public Affairs, 1986), but alternate figures do exist. According to the Bhopal Methyl Isocyanate Incident Investigation Team Report, published by the Union Carbide Corporation (Connecticut, March 1985), plant inventory documents show that there were 41 metric tonnes of methyl isocyanate (MIC) in the tank that ruptured, #610. Union Carbide's Team Report concludes that 24.5 metric tonnes of unreacted MIC escaped from tank 610 along with 11.79 tonnes of reaction products, and that 4.5 to 9.5 metric tonnes of solid reaction products were left behind in tank 610. The Report on Scientific Studies on the Factors Related to Bhopal Toxic Gas Leakage (Council for Scientific and Industrial Research, New Delhi, December 1985), a report produced by a team of Indian government scientists, similarly concludes that there were 42 metric tonnes of MIC in tank 610 at the time of the gas leak. However the report also concludes that only about 12 tonnes of MIC was used up to produce the 12.5 tonnes of solid residue estimated to be present.

³ Amnesty International "Clouds of Injustice". 2004, p. 1. Available online at <http://web.amnesty.org/pages/ec-bhopal-eng>. Figure of 8,000 cited in *New Scientist Magazine*. "Fresh evidence on Bhopal disaster." December 2, 2002. Available at: <http://www.newscientist.com/news/news.jsp?id=ns99993140>. Estimates come from independent relief organizations working in Bhopal immediately after the gas leak, and were based on evidence such as the number of funeral shrouds (kafans) sold by the local Cloth Merchant Association. See also *Five Past Midnight in Bhopal*, Javier Moro & Dominique Lapiere, 2001, pgs. 365-366.

⁴ Amnesty International "Clouds of Injustice". 2004, p. 1. Available online at <http://web.amnesty.org/pages/ec-bhopal-eng>. See also *The Hindu*, available at <http://www.hindu.com/thehindu/mp/2004/05/10/stories/2004051001720100.htm>.

⁵ Exactly 521,262 according to the Indian Council for Medical Research (ICMR). See Five Past Midnight in Bhopal, Javier Moro & Dominique Lapierre, 2001, p 366. Figure of 500,000 cited in The New York Times. “Bhopal Seethes, Pained and Poor 18 Years Later.” Amy Waldman, September 21, 2002.

⁶ The Washington Post. “India Seeks to Reduce Charge Facing Ex-Union Carbide Boss.” Rama Lakshmi, July 8, 2002. According to The International Medical Commission, Bhopal, “it is our opinion that, if properly defined, categories of permanent damage, partial or total disability, could include about 200,000 survivors.” International Perspectives in Public Health, 1996, Volumes 11 and 12, p. 27.

⁷ According to The Centre for Rehabilitation Studies’ (an office of the Madhya Pradesh government’s Bhopal Gas Tragedy Relief and Rehabilitation Dept.) 1998 Annual Report, the mortality rate among the exposed community in 1997 was 6.70/1000, whereas in the unexposed community it was 5.37/1000, producing a figure of 665 deaths above the mortality rate in the exposed community - or approximately 50 gas related deaths per month. Further, according to a 1987 ICMR report, the mortality rate in the exposed community was 9.98/1000 and in the unexposed community was 6.03/1000, meaning approximately 150 gas related deaths per month in 1986. Assuming a steady ratio of depreciation in mortality of 6% per year, in 2003 there were therefore over 30 deaths per month due to gas exposure. However, it is worth noting that six monthly morbidity studies conducted by the ICMR between 1987-1991 show that the number of people with gas related symptoms actually increased in that period.

⁸ These were: 1. flare tower (disconnected); 2. vent gas scrubber (out of caustic soda and inadequate for unsafe volume of gas); 3. water curtain (not functional; designed with inadequate height); 4. pressure valve; 5. run off tank (already contained MIC); 6. mandatory refrigeration for MIC unit (turned off to save money). See Dominique Lapierre and Javier Moro. Five Past Midnight in Bhopal. (Warner Books, 2002)

⁹ Office of the Medical Commissioner of Bhopal, December 1999.

¹⁰ International Perspectives in Public Health, 1996, Volumes 11 and 12, p. 31.

¹¹ Ranjan, N. a. S., Satinath et al. “Methyl Isocyanate Exposure and Growth Patterns of Adolescents in Bhopal” Journal of the American Medical Association, October 2003. Available online at <http://www.bhopal.org/jama.pdf>

¹² Two court cases are pending: one civil, heard in the Southern District federal court in New York; the other criminal, heard before the Chief Judicial Magistrate’s court in Bhopal. The civil case - which is unrelated to the disaster itself - was filed in United States federal court in 1999 by Bhopal residents against Union Carbide. When it fled India after Bhopal, Carbide left tons of chemical wastes behind, and these have poisoned the groundwater and thousands of Bhopal residents. The civil case seeks a comprehensive cleanup of the contaminated site and the properties around the factory, and compensation and medical monitoring for those poisoned by Carbide’s chemical waste. The lawsuit, Bano v. Union Carbide, has survived four motions to dismiss, and has been reinstated twice by the 2nd Circuit Court of Appeals. The criminal case -

which is related to the 1984 Bhopal disaster – was originally filed in 1987, and reinstated in 1991. Both Warren Anderson, the former CEO of Union Carbide, and the Union Carbide Corporation itself face criminal charges in India of “culpable homicide” (or manslaughter). Both Anderson and Carbide have repeatedly ignored summons to appear in India for trial, and are officially considered “absconders” (fugitives from justice) by the Chief Judicial Magistrate’s Court in Bhopal. While Anderson, if extradited and convicted, would face ten years in prison, Carbide faces a fine which has no upper limit.

¹³ See BBC. See <http://news.bbc.co.uk/2/hi/business/2240895.stm>

¹⁴ Although the Indian Government published proclamations in The Washington Post (January 1st and February 21st, 1992) calling on Mr. Anderson and the Union Carbide Corporation (UCC) to present themselves before the court in Bhopal, neither has obeyed the summons. Both have been labeled “absconders from justice” by Chief Judicial Magistrate’s Court in Bhopal. Mr. Anderson disappeared shortly after Interpol released an international warrant for his arrest, and his whereabouts were unknown for more than a decade. The Washington Post. “India Seeks to Reduce Charge Facing Ex-Union Carbide Boss.” Rama Lakshmi, July 8, 2002.

¹⁵ <http://www.bhopal.net/oldsite/contaminationtour.html>

¹⁶ In 1999 local soil and groundwater testing revealed mercury levels 20,000 times higher than expected, and other cancer, brain-damage- and birth-defect-causing chemicals at levels up to 50 times higher than EPA safety limits. (The Bhopal Legacy, Greenpeace Research Laboratories, University of Exeter, November 1999.)

¹⁷ Dow has argued that since it does not own the former Union Carbide factory site in Bhopal (the site was only leased from the Madhya Pradesh government, and that lease has expired), it cannot be held responsible for the contamination there. This stand is contradicted by the Hazardous Waste (Management and Handling) Rule of 1989 594(E), Section 3 Sub section (1) and Section 4(1), which stipulates that the producers of the contaminated waste are responsible for decontamination. The “polluter pays” principle is also enshrined in the Environmental Protection Act, passed in India in 1986. Ruling in Vellore Citizens' Welfare Forum v. Union of India (1996) 5 SCC.647, the Indian Supreme Court declared that, “. . .Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on.” Elaborating on the “polluter pays” principle in MC Mehta v. Union of India (1997) 2 SCC 353, the Supreme Court ruled that “polluter pays” principle as interpreted by the Court means that “the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also of restoring the environment degradation.”

¹⁸ Cited in The New York Times. “Bhopal Seethes, Pained and Poor 18 Years Later.” Amy Waldman, September 21, 2002. This refusal is inexplicable, as ‘trade secret’ provisions do not, in fact, apply. This was revealed in a Chemical Manufacturers Association (CMA) meeting shortly after the Bhopal disaster, at which Union Carbide representatives were present: “Trade secret protections under the federal standard extend only to chemical identity, not hazard

information. ...Chemical identity information which is a trade secret is made available to those who have a legitimate need for it, such as treating physicians.” See page 34 of the CMA Executive Committee Meeting Agenda, January 28, 1985, available at: http://www.chemicalindustryarchives.org/search/pdfs/cma/19850128_00000473.pdf.

¹⁹ See Dow’s 3rd Quarter, 2005, financial summary, available at: <http://www.dow.com/financial/reports/05q3earn.htm>. By way of comparison, technical guidelines drawn up by Greenpeace scientists in 2002 and handed over to Dow Chemical and the Indian government indicate that a cleanup of Bhopal would cost somewhat over \$500 million. See Technical Guidelines for Cleanup at the Union Carbide India Ltd. (UICL) Site in Bhopal, Madhya Pradesh, India. Greenpeace Research Laboratories, University of Exeter, October 2002. Available at: http://www.greenpeace.to/publications_pdf/Bhopal_cleanup_2002.pdf.

²⁰ See “Considerations in Taxable Corporate Acquisitions”, Thomas C Lacey, Jr., October 29th, 1998, p. 2. Available at: http://www.butlersnow.com/library_pdfs/1998_v1n5_pn.pdf.

²¹ The University of Texas International office records.

²² According to documents released by the University of Texas at Austin’s Resource Development Office to Ryan Bodyani in 2003 under a Freedom of Information request.

²³ Dow’s spokesperson has been quoted as saying, “Union Carbide and Mr. (Warren) Anderson, the former CEO, are named in it [the criminal case]. They have not come forward. Their position on the matter is that the Indian government has no jurisdiction over Union Carbide or Mr. Anderson; therefore, they are not appearing in court.” See The Michigan Daily, online at <http://www.michigandaily.com/vnews/display.v/ART/2003/12/04/3fcec5a43b7ac>. In a July, 2003 Congressional letter, 18 US Members of Congress wrote to Dow that “The disaster in Bhopal continues, and is likely to worsen if Dow Chemical does not step forward to fulfill its responsibilities. It is disheartening to note that a company such as Dow, who professes to lead the chemical industry towards 'responsible care' shies away from its obligations when truly responsible care can be demonstrated. More disturbing is the manner in which Union Carbide and Dow Chemical have ignored the summons of the Bhopal court. This exposes a blatant disregard for the law. By refusing to address the liabilities it inherited in Bhopal via its acquisition of Union Carbide, Dow Chemical is party to the ongoing human rights and environmental abuses in Bhopal.” Available online at <http://www.studentsforbhopal.org/Assets/Congress.Letter.pdf>.

²⁴ Amnesty International "Clouds of Injustice". 2004, p. 1. Available online at <http://web.amnesty.org/pages/ec-bhopal-eng>.

²⁵ Resolution circulated at the University to this effect has gathered more than 1000 university student and faculty signatures. Please see attached photocopies of the same.