

**SUPREME COURT MONITORING COMMITTEE ON HAZARDOUS WASTES
(SCMC)**

Report of the visit of the SCMC to Kerala with recommendations (14.8.2004)

The SCMC visited Kerala to monitor implementation of the Supreme Court's order dated 14.10.2003. The Committee was also due to visit the Coke and Pepsi plants in Palakkad district on the recommendation of the "Joint Parliamentary Committee on Pesticide Residues in and Safety Standards for Soft Drinks, Fruit Juice and Other Beverages." (See page 94, para 2.187 of the JPC report).

The Committee visited several units generating hazardous wastes, from Thiruvananthapuram to Kochi, and thereafter also visited the Coke and Pepsi plants during its visit to Palakkad district, from 10-13 August 2004. It visited the Cochin Port Trust and Customs on August 13, 2004 to resolve outstanding issues. The Committee received a large number of written representations and photographs from community-oriented groups including the Periyar Malineekarana Virudha Samiti, Periyar Samrakshana Samiti, the Merchem Malineekarana Virudha Samiti, THANAL and PUCL. It also received representations from union leaders and some employees pleading against closure of industries on grounds of employment. It had meetings with company officials of industrial units it visited, district officials, officials of water regulatory bodies including the Kerala Pollution Control Board and panchayat officials.

General observations:

The Committee found to its shock that the authorities in Kerala had allowed widespread disregard of the court's order dated 14.10.2003. It found several industrial units operating without authorization as required by the Hazardous Waste Rules, 1989 and in defiance of the order dated 14.10.2003. It found that since the state had no Treatment, Storage and

Disposal Facility (TSDF) for hazardous wastes, these wastes was being discharged into the environment by most of the industries concerned. In addition, it found the provisions of the Air and Water Acts were also being openly flouted.

The Committee found that in many areas, industrial units had contaminated ground water supplies of the communities surrounding the plants and that nothing had been done to remedy this situation. Some water supplies were being delivered in tankers to the affected communities, but these were woefully inadequate and unjust.

The Committee was particularly alarmed and distressed at the state of the Periyar river, which is the lifeline of Kerala. The Committee found that the river itself had been converted into a vast, illegal TSDF for receiving a large quantity of hazardous wastes. Several industries – many owned by government – that should have long been closed because they are still relying on obsolete technology and obsolete products, were in operation, not only impacting negatively on the environment but losing public money as well in crores. It appeared to the Committee that the state of Kerala was more than a decade behind the process improvements in other states: it looked as if the state had pushed itself into a time-warp from which it was unable to extricate itself.

The Committee noted that the Kerala Pollution Control Board (KPCB) had been informed during the latter's appearance before the Committee in Delhi on 7/8 April 2004 that all steps should be taken to ensure that no units were functioning without authorisation beyond May 31, 2004. The Board was informed that if units were found without authorisation beyond that date, contempt proceedings would be recommended against the Board. The Board was also directed at the same time to ensure that all units had the requisite board displaying necessary information on-line about the unit's hazardous chemicals and wastes outside the factory gates. The Board had also been told that a site for the state's TSDF must be found and notified by 31 May 2004.

The Committee records that thereafter a formal letter dated 31 May, 2004, signed by its Chairman, was sent to the Chief Secretary, Kerala, for compliance on these points.

Despite these efforts of the SCMC to ensure compliance, it found to its dismay that the KPCB had continued to disregard the order of the Supreme Court dated 14.10.2003.

The Committee is therefore issuing the following directions to reverse this terrible situation in the State and to ensure compliance of the Supreme Court's orders:

- 1) The State Government of Kerala will forthwith institute an inquiry as to why the Kerala Pollution Control Board has wilfully and callously disregarded the directions of the Supreme Court Order dt. 14.10.2003 and identify the officials responsible for it.
- 2) The Secretary, Government of Kerala in the Department of Health (which supervises the KPCB) and the Chairman, KPCB, are both cited for contempt proceedings for their willful disregard and non-compliance of the order of the Supreme Court dated 14.10.2003.
- 3) Given the current deplorable scenario of hazardous waste management in the State, the Government of Kerala is hereby advised to revamp the KPCB as necessary to inject dynamism, courage and foresight in its functioning and to make it a really performing Board.
- 4) The KPCB is directed to close forthwith all units that have no authorisation to operate under the Hazardous Waste Rules, 1989. These units will not be allowed to reopen until they have the proper facilities to dispose of their hazardous wastes as required under the Rules. This order must be complied with within eight days and compliance report submitted to the SCMC in Delhi at the expiry of the period.
- 5) Relying upon the Supreme Court order dated 7 May 2004 that requires water to be supplied to communities affected by industrial wastes, the Committee directs the

State of Kerala and the industrial units of Hindustan Coca Cola, Binani Zinc, Kerala Mines and Minerals and Kerala Newsprint to ensure that water supply through pipeline is delivered to the residences of all the affected communities in the vicinities of these units. The present arrangement delivering water in tankers or in a few public locations through public taps is unacceptable. The KPCB is directed to set up four committees under KPCB Regional Officers in these places to create a register of persons affected and to ensure that the above companies install a piped water supply to the residences of all the persons so affected. Action plan for compliance of this direction shall be submitted within two weeks. Action shall be completed within six months.

6) In relation to restoring the life of the Periyar river, the Committee directs the KPCB to set up a Local Area Environment Committee (LAEC) in terms of paras 52 and 55 of the order dated 14.10.2003. The LAEC will comprise the Regional Officer, KPCB, as convenor, two representatives from the industry associations or industrial units located in Edayar and Eloor and two representatives of local environment groups. The LAEC will be constituted forthwith. Costs of its working will be met by the KPCB. Non-official members will be entitled to an honorarium or stipend for their work on the committee. All industrial units will be notified of the formation of the LAEC. The LAEC will have the following terms of work, to assist the SCMC:

- a) It will commence an environment audit of all the 247 industries located in the area and that are affecting the ecology and environment and the local health of populations along the Periyar river and in Udyogamandal industrial estate. This environment audit will be completed in six months.
- b) The LAEC will visit each of the industrial units and ensure that the units are complying with environment laws including the provisions of the Hazardous Waste Rules. It will ensure that there are no illegal discharges

of hazardous wastes into the Periyar river either in the form of solid waste or liquid effluent containing hazardous wastes.

- c) It will ensure that a proper material balance is maintained of the various chemicals and wastes used and generated in the premises of each unit.
 - d) It will also ensure that all industrial units covered by the order dated 14.10.2003 will have display boards in Malayalam and English at the main gate accessible to all members of the public in the vicinity.
- 7) Copies of all the consents granted to the various units under the Water and Air Acts and the authorisations granted under the Hazardous Waste Rules, 1989, (if any), will be handed over to the LAEC. Any other environment information related to environment protection of the Periyar river will be handed over if requested by the LAEC as if it were being requested by the SCMC. Any non-compliance in this regard should be drawn to the Member Secretary, SCMC, for immediate redressal.
- 8) Should the SCMC find that these actions do not turn the situation around and reverse the pollution of the Periyar river within the stipulated period of six months, it will have no hesitation in directing the closure of the entire Udyogamandal industrial estate and ordering a special audit of the area. Units will be allowed to re-open one by one thereafter only if they are able to convince the KPCB that all measures have been installed to ensure discharge as per EPA standards and HW Rules.
- 9) The SCMC has agonized over the hazardous state of the Periyar river and has decided to levy a heavy collective fine of Rs.2.5 crores on the entire industrial estate of Eloor and Edayar on the polluter pays principle. The KPCB will ensure that this amount is collected as per the directions of the SCMC. This fine will be utilized to monitor the health of the river, to create conditions for the re-entry of

life in the river and to restore its ecology. The Committee feels there is no other way given the circumstances to raise an appropriate alarm and to jolt the industrial units into doing something drastic about the present state of affairs.

Directions in connection with individual units visited by the Committee:

10) **Hindustan Insecticides Ltd (HIL):** The Committee visited the plant and also queried the officials about the fire that had engulfed the Endosulfan plant on July 6, 2004. It also inspected the hazardous waste facility (on-site). The Committee is firmly convinced that Hindustan Insecticides Ltd should go for closure and that the area in which the company has been conducting its operations should be allowed to recover from the various toxic materials and chemicals used by the company and discharged by it into the environment over the decades. The company should be allowed to reopen only if it can shift to clean technology and a new product mix. The Committee has noted that the sale and distribution of Endosulfan in the State of Kerala is, in any event, banned pursuant to orders of the Kerala High Court. The industry is also violating the conditions of authorisation and shall be closed as per order of the Supreme Court dated 14.10.2003.

11) **Hindustan Coca Cola, Plachimada:** The Committee was disturbed that the company had, without prior approval of the authorities concerned with agriculture, disposed of its sludge (containing heavy metals) to farmers in the neighborhood as fertilizer. The company was unable to convince the Committee of the source of the toxic heavy metals found in the sludges. The Committee visited areas around the factory affected by the unauthorized disposal of sludge and also listened to complaints about contamination of ground water supply. The Committee members themselves consumed the ground water and found its taste odd. The Committee was provided reports from various government authorities that the water was unfit for drinking. This was not the situation prevailing prior to the company being established in the area. As the communities settled around the

plant were from the tribal and unprivileged communities whose life had been disturbed by the company's activities, the SCMC had no hesitation in coming to the conclusion that the company will take quick measures to ensure water supplies to all the persons in the vicinity of the plant. The RO of the KPCB to look into this and report compliance. The Committee also directed the KPCB to ensure that all sludges dumped by the factory outside its walls would be retrieved and placed within the new landfill being constructed by the Company.

12) **Pepsi plant:** The SCMC visited the plant and inspected the secured landfill for the sludge generated by the company's activities. As the unit is located within an industrial estate, there were no complaints from adjoining communities relating to the activities of the company.

13) **Pepsi and Coke plants:** The SCMC, in its investigation of both plants, discovered that the plants were withdrawing ground water without paying any charges for the collection and sale of these common resources. This anomaly needs to be looked into by the authorities and is outside the purview of this Committee's work. However, in order to reduce withdrawal of ground water, both units are directed to install RO systems to ensure that use of public water for effluent treatment is returned to its original condition for re-use. This recommendation will be implemented within six months. KPCB shall issue appropriate directions to the industries within one week. KPCB and CPCB (Bangalore office) shall report compliance to SCMC.

14) **Fertilisers and Chemicals Travancore Ltd (FACT), Udyogamandal:** The Committee was told that the company was losing around Rs.200 crores every year. The Committee did not appreciate the manner in which the company had discharged its gypsum wastes in the open environment. It recommended that the Government of Kerala direct the company to hand over five acres of the land degraded by such gypsum disposal for the construction of a TSDF which could be used to handle the wastes generated from the entire Udyogamandal area. If the

company is unwilling, the land should be acquired through process of law under Water Act. The operator of the facility could be asked to also secure the gypsum wastes as part of his contract since he would be entitled to Central government subsidy for the construction of the TSDF. The Committee feels that hazardous wastes ought not to leave the Udyogamandal area and the facility should be located in the same area. (Action KPCB)

15) Cochin Minerals and Rutile Ltd, Edayar: The hazardous waste storage is not as per the HW Rules. The quantities at site do not match the authorization granted. The unit has already faced closure earlier for discharging hazardous wastes through a concealed illegal pipeline into the Periyar river. The unit will not reopen until and unless its pollution of the Periyar river due to this industry is brought to a complete halt. (Action KPCB / CPCB)

16) Binani Zinc Limited, Binanipuram, Edayar: The SCMC visited the area contaminated by the jarosite ponds of the company. The pollution of ground water was observed everywhere outside the ponds. (Later, the same evenings, photographs about the pollution were submitted to the Committee).

The KPCB opined that the pollution may be due to the old ponds that were sealed but which may still be leaking. The neighbourhood residents complained to the Committee that fresh water supply from the company in view of the pollution was woefully inadequate and the tanker system grossly inconvenient, especially to old persons etc.

It appeared that the company had submitted for public hearing and had been granted environment clearance for three new ponds, despite wholesale protests from the community.

In view of the continuing pollution from the old ponds and suspected pollution from the new pond, the KPCB was directed to withhold approvals for

construction and authorization of any new ponds under the HW Rules until an expert body is appointed to examine the points of sources of pollution from the unit. The company is directed to ensure water supply from its own treatment plant to the neighbourhood affected, by pipeline, to individual residences and not by tanker. KPCB in consultation with the SCMC is requested to recommend an expert to conduct the study which should be completed within three months. Costs of the study will be borne by Binani Zinc. (Action KPCB)

17) **Hindustan Newsprint Factory, Velloor, Kottayam:** The SCMC visited the area of waste treatment and disposal. It also listened to affected persons. It found the waste disposal practices of the company completely unacceptable: lime wastes and other wastes were thrown all over a large wetland area adjacent to the river and the ETP sludge and other dumped materials were allowed to overflow into the nearby settlement where it had contaminated around 40 wells and also the river. The company is directed to supply proper water supply to the affected community with piped water to the residences and not public taps as is presently arranged. The company will radically improve its containment of the slurry ponds and lime wastes. A local area environment protection committee may be set up here as well. (Action KPCB)

18) **Kerala Minerals and Metals Ltd, Chavara, Kollam:** The ETP acidic iron sludge of the public sector unit has begun to seep through the containment and contaminated the wells of the local residents, making them all unpotable. All the residents have been warned that the water should not be used for drinking, bathing or even for toilets. Water is now being supplied by the company but is woefully inadequate. The company is to take the same measures as directed for the other units inspected by the SCMC. Containment of the breached sludge pond is an urgent necessity as the entire groundwater may become permanently damaged and unfit for use. As of now, the sludge pond violates the provisions of the HW Rules. Authorisation must be withdrawn till the problem is resolved. (Action KPCB)

19) The SCMC also visited the Cochin Port Trust, in view of a complaint made by Southern Refineries that the waste oils from the Port were disappearing in the hands of unauthorized processors. However, the Deputy Chairman of the Port (Shri A. Janardhana Rao) and Captain Alapath both assured the Committee that if this were true, it ought to have been brought directly to their notice since the authorized dealer is Southern Refineries only and no other unit. They assured the SCMC that they would look immediately into the matter and ensure corrective measures. (Action KPCB)

20) The Customs was visited in connection with their communication to the SCMC dated 4.7.2004 relating to disposal of consignments imported as furnace oil but found on testing to be waste oil – illegal import as per the HW Rules. The SCMC informed the officers concerned that samples may be drawn in association with KPCB and sent to NIO to indicate presence, if any, of PCBs. If the presence of PCBs was positive, the entire consignment shall go for incineration. If not, they would stand confiscated and auctioned to registered recyclers. Addresses of the importers are to be handed over to the KPCB for further action so that the parties can be persuaded to re-export the consignments if possible or face severe consequences. (Action KPCB / Customs)

The SCMC was told a fresh consignment of waste oil had been received and that the shipping company was already looking for ways to re-export since it was paying heavy fines on a daily basis for receiving the cargo.

21) CPCB (Bangalore office) shall co-ordinate the work of implementation of the orders of the Court / SCMC and file reports to the Member Secretary of SCMC on quarterly basis on the above matters.

Dr G Thyagarajan
Chairman

Dr D.B. Boralkar
Member

Dr Claude Alvares
Member