

## **BICHHRI CASE ON STRICT LIABILITY AND POLLUTER PAY PRINCIPLE**

**Writ Petition (Civil) No.967/1989 with 94/1990, 824/1993 and 76/1994  
(Indian Council for Enviro-Legal Action and Others Vs Union of India &  
Ors.)**




This Writ Petition was filed by an NGO on behalf of the people living in the vicinity of chemical industrial plants located in a Village Bichhri in District Udaipur, Rajasthan. The problem began in the year 1987 when the Hindustan Agro Ltd. started producing chemicals like oleum (concentrated form of Sulphuric acid) and Single Super Phosphate. The real calamity occurred when a sister concern, the Silver Chemical commenced production of H-acid in the same complex. Due to production of H-acid, large quantity of highly toxic effluents and iron and gypsum sludge caused damage to the land. Another industry named M/s Jyoti Chemical was also established to produce H-acid besides other chemicals. All those chemical industries were located in the same complex in Village Bichhri. It was estimated that about 2400-2500 tonnes of highly toxic sludge was

produced while producing 375 tonnes of H-acid. Because of high quantity of sludge from those industries thrown in the open, in and around in the complex, the leachate from toxic sludge percolated deep into the ground polluting the aquifers and subterranean supply of water. The water in the wells and the stream turned dark and dirty and became unfit for human consumption. The Water became unfit even for cattle and for irrigation. The soil was spoiled and turned unfit for cultivation. Due to that, death and disaster in the village and surrounding areas were reported. The District Magistrate himself directed to close down both the units, M/s Silver Chemical and M/s Jyoti Chemicals. The manufacturing of H-acid was stopped from the month of January, 1989. The toxic sludge damaged the soil, groundwater, human beings, cattle and economy of the village.




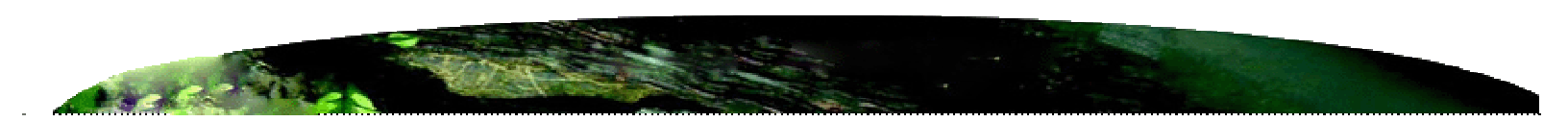
The Indian Council for Enviro-Legal Action filed this Writ Petition in August, 1989 with the prayer to the Court that appropriate remedial action may be initiated. The Rajasthan Pollution Control Board in its affidavit stated that (i) the Hindustan Agro Chemicals Ltd. obtained NOC from the Board for manufacturing sulphuric acid and alumina sulphate. But, this unit changed its products without



clearance from the Board and started manufacturing oleum and single super phosphate (SSP). The consent was refused and directions were issued under the Air (Prevention and Control of Pollution) Act, 1981 to close down the unit; and (ii) the Silver Chemical stated to be manufacturing of H-acid without obtaining NOC from the Board. The Waste generated from the manufacture of H-acid was highly acidic and contained very high concentration of dissolved solids alongwith several other pollutants. The unit was closed in 1989; (iii) the Jyoti Chemical had applied for NOC for producing ferric alum and oleum in 1988. The unit again applied for consent for manufacturing of H-acid but the consent was refused and the industry was closed in 1989. The Rajasthan Board also submitted that the sludge lying in the open in the premises of these industries ought to be disposed of in accordance with the provisions of the Hazardous Waste (Management and Handling) Rules, 1989 notified under the Environment (Protection) Act, 1986. The State Government of Rajasthan stated that the State Government was aware of the pollution being caused by these industries. Therefore, the State Government had initiated action through Rajasthan Pollution Control Board. The Ministry of Environment & Forests, Government of India stated that M/s Silver Chemical was merely granted letter of Intent but it never applied for conversion of the letter of Intent into Industrial Licence and was an offence under the Industries (Development and Regulation) Act, 1951. M/s Jyoti Chemicals did not approach the Government at any time even for a letter of Intent.

The Ministry of Environment & Forests also submitted a report of the Centre for Science and Environment (CSE), NGO. In its report, the Centre for Science and Environment after conducting the inspection of the village Bichhri stated that the effluents were very difficult to treat as many of the pollutants were non-compliant in nature. Setting up such highly polluting industry in a critical groundwater area was ill-conceived. About 60 wells appeared to have been significantly polluted. The aquifer was showing sign of pollution. After considering the replies of the Rajasthan State Pollution Control Board, the State

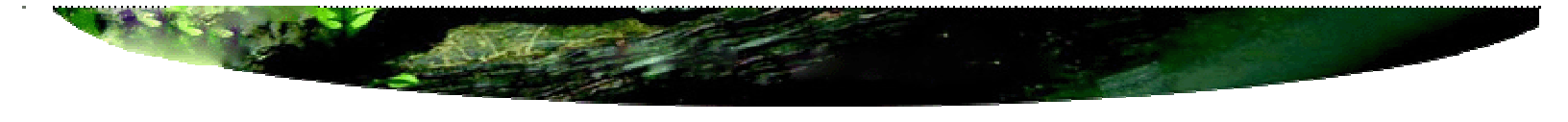


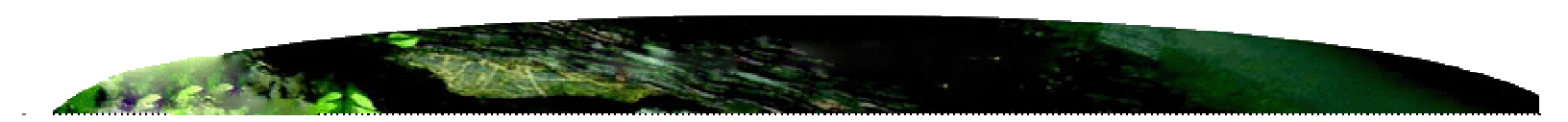


of Rajasthan, the Ministry of Environment & Forests and the industries, the Court on 11.12.1989 requested the National Environmental Engineering Research Institute (NEERI) to study the situation in and around village Bichhri and submit their report. After in depth study, NEERI submitted its report and suggested both short term and long term measures required to be taken in the area. The Court noted the statement of the Petitioner that though the manufacture of H-acid might have been stopped but large quantity of highly dangerous effluent/sludge had accumulated in the area and unless properly treated, stored and removed; it would be a serious danger to the environment. Accordingly, directions were issued to the Rajasthan Pollution Control Board to arrange for its transportation, treatment and safe storage in accordance with the procedure provided in the Hazardous Waste (Management and Handling) Rules, 1989 and also reasonable expenses for the said operation were directed to be borne by those industries.

The Central Board has also analysed the soil, sludge and water samples concerning this matter. The indepth investigations were taken up and reports were submitted to the Hon'ble Supreme Court for consideration.

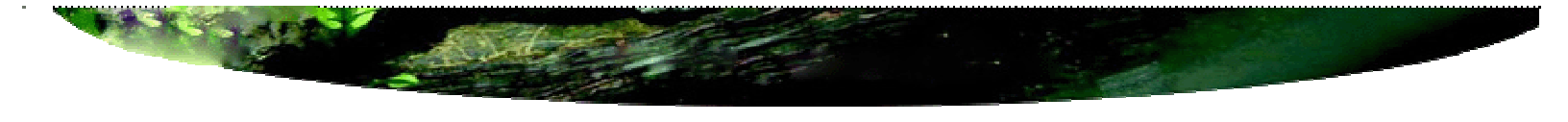
Earlier, on 5.3.1990 The Hon'ble Court directed that the sludge lying on the land be removed immediately to avoid the risk of seepage of toxic substances into the soil during the rainy season. On 4.4.1990, the Court further directed the Ministry of Environment & Forests, Govt.of India to depute its experts immediately to inspect the area to ascertain the existence and extent of gypsum-based and iron based sludge and to suggest the handling and disposal procedures and to prescribe a package for its transportation and safe storage. The cost of such storage and transportation was directed to be recovered from the industries located in the Complex. The Rajasthan Pollution Control Board submitted a report that about 720 tonnes out of the total contaminated sludge scraped from the sludge dump side was disposed of in six lined entombed pits covered by lime/fly ash mix, brick soling. The remaining scraped sludge and





contaminated soil was laying near entombed pits for want of additional disposal facility. After final hearing, the Court passed the final order on 13.2.1996:

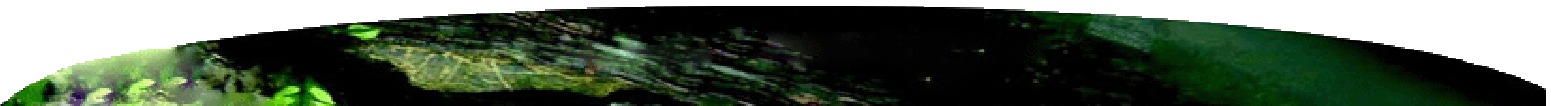
They are in the view that if an enterprise which is engaged in a hazardous or inherent industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas, it is an absolute and non delegable duty to the community to ensure that no harm to any one on account of hazardous or inherently dangerous nature of activity which it has undertaken. It is therefore held that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm to any one on account of an accident, the enterprise is strictly and absolutely liable to compensate all those who are effected by the accident and such liability is not subject to any of the exceptions as laid down in tortious principles of **strict liability** under the rule laid down in Rylands Versus Flecher. The law laid down in the case of Oleum Gas leak case (M.C.Mehta Vs. UOI & Ors) is also applicable in the present case and the industries (Respondent No.4 to 8) are absolutely liable to compensate for the harm caused by them to the villagers in the affected area, to the soil and to the groundwater and hence they are bound to take all necessary measures to remove the sludge and other pollutants lying in the affected area which is about 350 hectares. The **polluter pays principle** demands that the financial cost of preventing or remedying damage caused by pollution should lie with the industries which caused the pollution".





The Central Government should determine the amount required for carrying out the remedial measures including the removal of sludge lying in and around the complex of the industries within six weeks and the said amount were liable to be paid by the industries. If the said amount was not paid by the industries, the factories, plant, machinery and all other immovable assets of these industries be attached. So far as the claim for damages for the loss suffered by the villagers in the affected area was concerned, it was opened to them or any organization on their behalf to file suits in appropriate Civil Court.

The Central Government should consider whether it would not be appropriate that chemical industries were treated as a category apart. All chemical industries whether big or small should be allowed to be established only after taking into consideration all the environmental aspects and their functioning should be monitored closely to ensure that they do not pollute the environment even the existing chemical industries if found on such scrutiny that it was necessary to take any steps in the interest of the environment, appropriate directions may be issued under Sections 3 & 5 of the Environment (Protection) Act, 1986. The Central Government and the Rajasthan Pollution Control Board should file quarterly report with respect to the progress in the implementation of these directions. The need for creating environment courts to deal with all



matters, Civil and Criminal relating to the environment be considered. The industries (Respondent No.4 to 8) should pay a sum of Rs.50,000/-by way of costs to the petitioner who fought this litigation over a period of more than six years with its own means. The Writ Petitions were disposed of with the aforesaid directions.

