

AkzoNobel

Overview of controversial business practices in 2008

Roeline Knottnerus

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Colophon

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Introduction

This company report has been prepared by SOMO (Centre for Research on Multinational Corporations). It provides an overview of business practices that could be regarded as unsustainable or irresponsible which occurred (or might have been addressed) in 2008. In addition, it may describe developments on some issues identified in a similar overview for 2006, which was also prepared by SOMO.

The overview below describes only controversial practices and not the positive achievements of a company in the same year, except for positive developments related to some of the practices from the overview for 2006. Information on positive achievements can usually be found in a company's annual and/or sustainability report and on the company's website. The purpose of this report is to provide additional information to shareholders and other stakeholders of a company on controversies that might or might not be detected and reported by the company itself.

This report does not contain an analysis of a company's corporate responsibility policies, operational aspects of corporate responsibility management, implementation systems, reporting and transparency, or total performance on any issue. For some controversies, it is indicated which standards or policies may have been violated and a brief analysis is presented. Apart from this, the report is mainly descriptive.

The range of sustainability and corporate responsibility issues eligible for inclusion in this overview is relatively broad and mainly based on the OECD Guidelines for Multinational Enterprises. These Guidelines are used as a general frame of reference in addition to the company-specific standards.

Sources of information are mentioned in footnotes throughout the report. The main sources were obtained through SOMO's global network of civil society organisations, including reports, other documents, and unpublished information. Media and company information databases and information available via the Internet are used as secondary sources where necessary. AkzoNobel has been informed about the research project in advance and was given two weeks to review the report and provide corrections of any factual errors in the draft version.

The overview of controversial practices in this report is not intended to be exhaustive. Instead, it focuses on a limited number of issues and cases that might merit further attention or reflection. Where information about the latest developments, either positive or negative, was unavailable, it is possible that situations described in the overview have recently changed. Taking into account these limitations, SOMO believes that the report can be used for improvement and for a more informed assessment of a company's corporate responsibility performance.

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Controversial business practices

The majority of cases highlighted in this report have not yet developed into full-fledged CSR controversies. However, it was decided to include them, as they are giving rise to some serious concerns in relation to AkzoNobel's future CSR performance. AkzoNobel, in their response to this report, which was submitted to them for comments, acknowledges SOMO's concern for 'items which require a strong sustainability commitment and responsible management – in order to ensure they will not become areas of concern' and has indicated valuing these comments as important stakeholder input and advice.

Paragraphs 2, 3 and 4 deal with concrete litigations, fines and cartel prosecutions. The Raritan River contamination in particular appears to be a case in which AkzoNobel might take more responsibility to honour its CSR commitment. AkzoNobel's comments in relation to these items have been incorporated in the appropriate sections.

1. Toxic 100 Index and new methodologies for environmental CSR

In 2008, the Political Economy Research Institute (PERI) of the University of Massachusetts published its Toxic 100 Index, which identifies the top U.S. air polluters among the world's largest corporations, PERI ranks these on the basis of total human health hazards resulting from air toxics emissions at their facilities. AkzoNobel occupies an 85th place on the list (with the worst polluters occupying the top of the list and counting down).¹

The methodology used by PERI for the Toxic 100-list is based on the U.S. Environmental Protection Agency's Toxics Release Inventory (TRI), and in addition uses the most recent Risk-Screening Environmental Indicators (RSEI) data developed by the EPA. In addition to the TRI data, the RSEI data include toxicity weights and the number of people at risk. PERI researchers added up facility-by-facility RSEI data released by the EPA to construct the Toxic 100 Index's corporate rankings.

Recently, PERI developed a new Corporate Environmental Justice Performance methodology (CEPJ), which measures the uneven distribution of the health impacts of industrial emissions among the population. PERI's findings in the US are that these disproportionately affect minorities and poor people. As such, the CEJP approach offers a valuable new perspective to be taken into account in addition to aggregate corporate environmental impacts. As PERI writes: "For ethical reasons, it is of interest to know not only how much pollution is released by a firm's industrial facilities, but also how the resulting human health impacts are distributed across racial, ethnic, and income groups."²

PERI ranks AkzoNobel in the top-10 of worst performers in its industry in terms of health impacts on minorities and lower-income groups in the US. While PERI's data describe the situation in the US and the organisation indicates that these disparate effects may well reflect a wealth-bias in political decision-making and regulation,³ it seems advisable that the CSR policies of companies like AkzoNobel should reflect at least an awareness of such adverse distribution impacts in relation to their

¹ <http://www.peri.umass.edu/toxic100_index/>

² Measuring Corporate Environmental Justice Performance - Michael Ash & James K. Boyce - November 2008 - <http://www.peri.umass.edu/fileadmin/pdf/working_papers/working_papers_151-200/WP186.pdf> Political Economy Research Institute – University of Massachusetts Amherst

³ Ibid.

operations worldwide. It should be noted that although the ranking was published in 2008, the PERI's underlying more detailed figures for AkzoNobel derive from 2005.⁴

AkzoNobel has indicated it has compared the 2005 TRI data to the data for 2007 to measure the companies progress in reducing emissions. The company notes that as site locations and types of operations have remained much the same for the period 2005-2007, the specific 'toxicity' and population exposure factors will not have altered. However, in terms of quantity of releases, AkzoNobel states that a reduction in total air emissions of 21% was achieved between 2005 and 2007, and an overall reduction of 26% for offsite incineration for that same period. Based on these figures, AkzoNobel expects to drop out of the PERI Index top 100 list, when its updated results are published in 2010.

AkzoNobel further wishes to note, also with respect to its operating in low income areas, that it is continuously engaged in improving its sustainability approach, for example through its Eco-efficiency program and its new carbon emission policy.

2. Litigation over pollution charges

Notwithstanding AkzoNobel's green profile, in 2008, the company was involved in a number of pollution suits:

- In January 2008, Edison Wetlands Association, a local environmental group, took legal action against AkzoNobel Chemicals Inc., AkzoNobel Inc., and Basell USA Inc. in relation to the chemical pollution with toxic carcinogens like benzene and arsenic of the Raritan river, charging the chemicals are coming from a nearby AkzoNobel/Basell industrial site. AkzoNobel operated a chemical plant on the site from 1987 until 2006 when it was sold to Basell. In contradiction to consultants hired by EWA, AkzoNobel denies that the contamination is seeping from the Basell site.⁵ Further, representatives of AkzoNobel and Basell have said that the extent of the environmental damage has been overstated and that the firms involved are already in the process of working with the New Jersey Department of Environmental Protection in cleanup efforts.⁶ Throughout December 2008, activists hosted rallies against the implicated companies outside the factory site. EWA states that the area is dead and that benzene levels for instance, were documented by AkzoNobel's own consultant to amount to 860 times the acceptable state levels and the arsenic to 550 times the New Jersey Department of Environmental Protection's surface water criteria. Although AkzoNobel has sold the site on to Basell, as the former owner the company remains accountable and should not shirk responsibility for the environmental damage.

AkzoNobel wishes to stress that it purchased a site which was contaminated by prior owners and that AkzoNobel was not responsible for contaminating the Edison site. AkzoNobel states it 'has worked diligently and spent millions of dollars to clean [the site] [...] in cooperation and which the agreement of the New Jersey Department of Environmental Protection (NJDEP) and other government agencies', performing all the work necessary 'to protect human health and the environment'. The company is confident it has acted responsibly to protect the public and the environment with regard to former operations at the Edison site and is of the opinion that the pending litigation is without merit.

⁴ <<http://data.rtknet.org/tox100/index.php?search=yes&database=t1&detail=1&datatype=T&reptype=a&company1=&company2=677&chemfac=fac&advbasic=bas>>

⁵ 'Green group calls for cleanup of basin', The Star-Ledger, Newark, New Jersey, 13 November 2008; 'Edison Wetlands Association rallies against pollution flowing into Raritan River', Courier News, 26 November 2008.

⁶ Lawsuit over river contamination advances, <http://ems.gmnews.com/news/2009/0128/front_page/035.html>

- ❑ ICI Canada Inc. is currently being sued under the Canadian Environmental Protection Act for mercury pollution of the natural environment caused by an old sewer discharge pipe used by the ICI property. Plaintiffs Domtar, Paris Holdings, the Seaway and Trenholm Healey say they have made repeated written requests to ICI to stop discharging non-industrial effluent through the pipe, but the company has so far refused to do so.⁷ A failure to remedy the source of the pollution and clean up the area could interfere with the plaintiffs' plans for a major waterfront development along the St Lawrence river in the town of Cornwall on the former site of Domtar Papers.⁸ However, in 2004-5, ICI was engaging with the "Cornwall Mercury Trackdown", a cooperative initiative which further comprised the Ontario Ministry of the Environment, Environment Canada, City of Cornwall, the Raisin Region Conservation Authority, Domtar, and the St. Lawrence River Institute of Environmental Sciences to track mercury accumulation in the St. Lawrence river.⁹
AkzoNobel says in its defense that ICI Canada has been proactively involved with historical mercury issues at Cornwall over the past 12 years and has been cooperating fully with the authorities in the matter. According to AkzoNobel, a leading global environmental engineering firm hired by ICI to verify the factual assertions, has determined that the plaintiff's claim is 'completely baseless and their factual allegations false'

3. Fines

- ❑ In June 2008, AkzoNobel Functional Chemicals in Örnköldsvik was top of a list (with a fine of EUR 279,057.69) of 130 companies in Sweden fined for not fulfilling requirements concerning use and purchase of renewable energy.¹⁰ In relation to this matter, AkzoNobel concedes to a failure to comply with reporting requirements, but wishes to make clear that while this obviously represents an omission, it does not represent damage to the environment. According to AkzoNobel, new procedures have been developed to ensure annual submission deadlines will be met in the future.
- ❑ Delaware-based AkzoNobel Coatings, Inc. was fined \$23,800 by the US Environmental Protection Agency for failing to submit emergency and hazardous chemical inventory forms to local and state emergency planning and response teams under the federal Emergency Planning and Community Right-to-Know Act in 2005 and 2006 for paints, coatings and hazardous chemical mixtures stored at its warehouse.¹¹

4. Cartel prosecutions

- ❑ In January 2008, Brazil's federal court granted the right of appeal to 16 drug companies found guilty of operating as a cartel by Brazil's competition authority, CADE. The companies concerned constitute a wide mix of Brazilian firms and the local units of multinationals, and include: Abbott (U.S.), AkzoNobel (Netherlands), AstraZeneca (U.K.), Bayer (Germany), Biosintetica (Brazil), Boehringer Ingelheim (Germany), Bristol-Myers Squibb (U.S.),

⁷ 'Group suing ICI, others for \$40M; Claim filed, company will defend', Cornwall Standard Freeholder (Ontario), 20 June 2008

⁸ 'Cornwall 2015: Our city is changing right before our eyes', Cornwall Standard Freeholder, posted 7 month ago. <<http://www.standard-freeholder.com/ArticleDisplay.aspx?e=1152068>>. Accessed: 24 March 2009.

⁹ 'The Mercury Mystery', St. Lawrence River RAP Update, Vol. 5 No. 1, March 2006.

<<http://www.riverinstitute.ca/community/images/RAP%20newsletter%20EN%20Mar24.pdf>>. Accessed: 24 March 2009.

¹⁰ Sweden: Firms fined for insufficient use of green power, Esmerk Oy, 13 June 2008.

¹¹ EPA fines Phoenix company \$23,400 for hazardous chemical reporting violations, Environmental Protection Agency Documents and Publications, 7 July 2008

GlaxoSmithKline (U.K.), Janssen-Cilag (U.S.), Merck & Co (U.S.), Pharmacia/Pfizer (U.S.), Mantecorp (Brazil), Nycomed (Denmark), Roche (Switzerland), Sanofi-Aventis (France) and Wyeth (U.S.). In 2005, CADE imposed a fine on these companies of 1% of their turnover in 1998 for collaborating on devising common strategies to guard against the entry of generics into Brazil.¹²

The companies in question are fighting this decision on the grounds that it was not unanimous and based on inconclusive evidence. The 2005 decision was reached by three votes against two. Meanwhile, CADE, with 87% of its cases upheld, remains confident that its decision will be confirmed.

- On 27 June 2008, the European Commission charged a number of companies in the calcium carbide and magnesium powder sector – including one of AkzoNobel’s business units - with alleged participation in a cartel.¹³ The ‘statement of objections’ the EC sent out to a number of companies counts as the first step in EU anti-trust proceedings. This follows on raids by EU regulators on the offices of calcium carbide suppliers in Austria, Germany, Slovakia and Slovenia in January 2007. In that same month, AkzoNobel confirmed that its Swedish carbide unit was on the EU’s list of companies being investigated.¹⁴ The European Commission has so far declined to name any of the companies involved, and to date information on the time-frame in which the alleged cartel activities are to have taken place have not been forthcoming.¹⁵ Cartel investigations can take years to conclude. The Commission can fine companies it finds guilty of participating in a cartel up to 10 percent of their worldwide turnover.¹⁶
- AkzoNobel recently confirmed having received a similar ‘statement of objection’ for alleged infringements of EU competition law in relation to the production of heat stabilisers. The European Commission’s investigation relates to possible violations of antitrust rules prior to 2001.¹⁷

In relation to the issue of cartel prosecutions, AkzoNobel wishes to point out that all cases relate to possible violations of antitrust rules prior to 2001. The company is keen to draw attention to the introduction of its Business Principles program in 2000, which offered one-time amnesty rule for any breaches of business integrity, in combination with a zero tolerance policy for any breaches of integrity after the one-time amnesty. AkzoNobel is confident that its Code of Conduct and Compliance is currently well-established and implemented across the company’s businesses.

5. The economic crisis: shifting the burden?

In a letter sent out on 4 March 2009, AkzoNobel has been asking its suppliers to agree to a price cut of 10 percent for their products and services rendered, effective as of 1 March 2009. AkzoNobel

¹² Companies in Brazil Seek to Escape Punishment over Price-Fixing Cartel, Global Insight, World Markets Research Centre, 24 January 2008. Accessed through LexisNexis, 10 March 2009.

¹³ EC charges calcium carbide cartel participants, Chemical News & Intelligence, 27 June 2008

¹⁴ AkzoNobel says EU investigates carbide unit, Reuters, 18 January, 2007.

<<http://www.reuters.com/article/governmentFilingsNews/idUSWEB123420070118>>. Accessed: 19 March 2009.

¹⁵ The EU press releases on the case only confirm that a Statement of Objections was sent ‘to a number of companies active in the supply of calcium carbide and magnesium powder, concerning their alleged participation in a cartel in violation of EU rules on restrictive business practices (Article 81 of the EC Treaty and Article 53 of the Agreement on the European Economic Area)’. EU Rapid Press Release, ‘Antitrust: Commission confirms sending Statement of Objections to alleged participants in calcium carbide cartel’, 27 June 2008.

<<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/454&format=HTML&aged=0&language=EN&guiLanguage=en>>. Accessed: 19 March 2009.

¹⁶ <http://ec.europa.eu/competition/cartels/overview/faqs_en.html>. Accessed 22 March 2009.

¹⁷ ‘AkzoNobel ontvangt mededingingsklacht van EC’, Het Financieele Dagblad, 23 maart 2009.

<<http://www.fd.nl/artikel/11277496/akzonobel-ontvangt-mededingingsklacht-ec>>. Accessed: 24 March 2009.

claims this move is necessary in view of the 'current harsh trading conditions', necessitating 'rigorous cost management actions'.¹⁸ However, having publicly embraced sustainability as a core principle and business driver, AkzoNobel ought to be upholding its ethic also in times of recession. Although the company is promising that 'those suppliers that comply during this challenging period will reap the rewards of their commitment in the future', in the short term this present move may have negative impacts on job security, labour conditions and other social and environmental concerns further down the line. AkzoNobel ought to take its supply chain responsibility during the current economic downturn and be careful not to shift (part of) the burden of adjustment onto smaller companies which will likely have much less fall-back to weather this storm. In this context, it is relevant to note that ICI Paints AkzoNobel has been urging the construction and manufacturing industry to keep sustainability as their number one priority, even as the recession continues to tighten its grip on the globe, as part of its 'Step Towards Greener' environmental campaign.¹⁹ AkzoNobel must practice what it preaches and ensure its own purchasing practices reflect their public demands on other sectors.

AkzoNobel has responded to the concerns of SOMO and the VBDO in this matter by stating that their request to a segment of high level third parties and consultants to agree to a price cut does not interfere with sustainable supply chain management. AkzoNobel states: 'we practice what we preach by embedding sustainability in our sourcing practices, both with respect to Vendor policies, Sustainable Supplier Visits and Reduction of cradle-to-gate carbon footprint along key value chains'.

6. Possible contradiction: Lobbying for energy discounts

Sustainability was first embraced by AkzoNobel as a fundamental principle with the appointment of a new Board of Management in 2004 and has since earned the company a second place on the Dow Jones Sustainability Indexes, with a score of 86%, just one percentage point behind BASF, which currently heads the list.²⁰ AkzoNobel is also included on the FTSE4Good Index.

In possible contradiction with this sustainable image, AkzoNobel, along with other major Dutch corporations, has recently been lobbying to be granted a 10% discount on their energy consumption to mitigate the effects of the global economic crisis. Dutch environmental group Milieudefensie has commented that such a deal would take away incentives to invest in energy efficiency – a vital necessity in light of climate change.

Fact is that in February 2009, the Dutch Association for Energy, the Environment and Water (VEMW) sent out an appeal to the Dutch authorities to mitigate the effects of the global downturn by reducing energy costs for Dutch industry. VEMW suggested that, in the interest of saving jobs, public shareholders should agree to lower returns on their shares in gas and electricity networks.²¹ VEMW represents a broad membership of corporate energy and water users. AkzoNobel Energy's P.M.J. Verberne is vice-president of the association.²²

In an open letter to the shareholders of the Dutch energy networks,²³ VEMW wrote:

¹⁸ A scan of AkzoNobel's letter can be found at: <<http://media.rtl.nl/media/financien/rtlz/2009/akzo.jpg>>. Accessed: 24 March 2009.

¹⁹ ICI Paints AkzoNobel throws down sustainability gauntlet to industry, <http://www.icipaints.co.uk/news/news_akzonobel_sustainability_gauntlet.jsp>

²⁰ BASF Ousts AkzoNobel as Most Sustainable Chemical Firm, Chemical Week, 15 September 2008

²¹ Lager dividend netwerkbedrijven redt werkgelegenheid in Nederland, VEMW press release, 18 February 2009. <<http://www.vemw.nl/cms/showpage.aspx?id=939>>. Accessed: 19 March 2009.

²² <<http://www.vemw.nl/cms/showpage.aspx?id=4>>

“VEMW appeals to you as the owners of the electricity and gas networks to forego in this exceptional economic situation, as a once-only gesture, half of the returns you receive on your invested capital. In addition, we call on you as shareholders of the network companies, to have the boards of these network companies implement a one-off tariff reduction of 10 percent. In this way, all public authorities will concretely contribute to the preservation of economic activity and employment in the Netherlands.”²⁴

In June 2008, Greenpeace took legal action to gain insight in secret energy deals between the Dutch government and eight energy intensive companies, including AkzoNobel, in connection with plans for the building of a new coal-fired energy plant on the Maasvlakte.²⁵ These deals are intended to help make construction of the plant viable. Greenpeace objects to the damaging climate and environmental effects associated with coal-fired plants.

AkzoNobel's comments on this issue:

'The AkzoNobel Board of Management has agreed to a leading carbon reduction program – based on the tripod of energy efficiency, carbon reduction and energy security. Targets 2015 and 2020 ambition levels for carbon reduction along all of our cradle-to-gate value chains are included in the company strategy dashboard. In previous sustainability reports we have reported our leadership on using low carbon energy sources and on improving our energy efficiency. Compared to neighbouring countries, the Netherlands is an island of high price levels for natural gas – to such an extent that the use of low carbon CHP (Combined Heat and Power installations) tends to become uncompetitive. It's obviously both for the benefit of our company, our shareholders and for society that we continue to operate our CHP – installations at full capacity – obviously this requires competitive prices for the required fossil fuels.'

²³ VEMW, Open brief aan de aandeelhouders van energie-netwerkbedrijven in Nederland, 17 February 2009. <<http://www.vemw.nl/documenten/09708.1%20pb%2001bijlage.pdf>>. Accessed: 19 March 2009.

²⁴ Translation: SOMO. The original text reads: “VEMW doet een beroep op u als eigenaar van de elektriciteits- en gasnetten om in deze uitzonderlijke economische situatie - eenmalig - af te zien van de helft van de vergoeding die u voor uw geïnvesteerde kapitaal ontvangt. Daarnaast roepen wij u als aandeelhouder van de netwerkbedrijven op om de directies van deze netwerkbedrijven een eenmalige tariefsverlaging van 10 procent door te laten voeren. Zo leveren alle overheden een concrete bijdrage aan de instandhouding van economische bedrijvigheid en werkgelegenheid in Nederland.”

²⁵ Kabinet wil handjeklap met energieslurpers, Greenpeace press release, 18 June 2008, <<http://p2-raw.greenpeace.org/amercom/nieuws/kabinet-wil-handjeklap-met-ene>>.