

# Unilever

## Overview of controversial business practices in 2009



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## Colophon

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## Introduction

This brief company profile is a joint initiative of SOMO (Centre for Research on Multinational Corporations) and the VBDO (Vereniging van Beleggers voor Duurzame Ontwikkeling). It provides an overview of business practices that may be considered unsustainable, irresponsible, or controversial and that took place or were addressed in 2009. In the context of the upcoming annual general meetings (AGMs) of shareholders of Dutch corporations, the overview aims to provide additional information to Unilever's shareholders and other stakeholders on potentially controversial issues that may or may not be detected or reported by the company itself. By highlighting such issues, the overview can be used to identify areas of the company's corporate responsibility policies and practices that need improvement and to formulate a more informed assessment of a company's corporate responsibility performance.

The range of sustainability and corporate responsibility issues eligible for inclusion in this overview is broadly based on the issues and principles identified in the OECD Guidelines for Multinational Enterprises, which is one of the leading global normative standards for responsible business behaviour and which is applicable to all Netherlands-based companies by virtue of the Dutch government's membership in the OECD. Rather than an exhaustive analysis of Unilever's corporate responsibility policies, operational aspects of corporate responsibility management, implementation systems, reporting and transparency, or total performance on any issue, the overview provides a descriptive depiction of a limited number of corporate responsibility-related issues and cases that might merit further attention or reflection. Unilever's positive sustainability achievements in 2009 are not addressed here.

The research methodology for this overview involved primarily desk research methods, relying on information from SOMO's global network of civil society organisations, the company's own website and publications, media reports, and company information databases. All sources are cited in footnotes in the text. As per SOMO's standard research methodology, Unilever was informed about the research in advance and was given two weeks to review a draft report and provide comments and corrections of any factual errors in the draft version prior to publication.

The overview has been researched and drafted by SOMO. SOMO is an independent research organisation that was founded in 1973 to provide civil society organizations with knowledge on the structure and organisation of multinationals.

# Controversial Business Practices in 2009

## Mercury Contamination in Kodaikanal

### Summary

This case pertains to mercury contamination caused by a Thermometer Factory in Kodaikanal India, owned by Unilever, that was closed in 2001. A protocol to clean up the mercury contaminated soil in the factory was endorsed by the relevant local authority, the Tamil Nadu Pollution Control Board (TNPCB) in 2008. However, a coalition of 25 organisations of residents and former workers in Kodaikanal called Tamil Nadu Alliance Against Mercury (TAAM), claims that the standards of this clean-up protocol have been relaxed and are now set below acceptable levels, following the recommendation of the company's own consultants. Among other things TAAM demands that all clean-up work must be stopped onsite until a Citizens' Oversight Committee is formed, that a public hearing be held on the matter of clean-up and that the site has to be cleaned to standards appropriate for a forest ecosystem.

### Context/description of the issue/problem

- ❑ In March 2001, Greenpeace and Palni Hills Conservation Council reported that Hindustan Unilever (HUL), a subsidiary of Unilever, had allowed 7.4 tonnes of mercury contaminated glass waste from their thermometer factory to be dumped on a scrap yard about 3 km away from the factory.<sup>1</sup> They also warned that contaminated waste had been dumped behind the factory wall onto the slopes leading to Pambar Shola, an important and protected nature sanctuary.<sup>2</sup> The factory was immediately shut down by the Tamil Nadu Pollution Control Board (TNPCB). Data later provided by the company estimated that over 17 years a total of 1.3 tonnes of mercury had leaked into the Shola forest, a type of high-altitude stunted evergreen forest peculiar to the Western Ghats of South India. A further 366 kg was estimated to have contaminated the soil on the factory premises.<sup>3</sup>
- ❑ In June 2001 HUL removed the mercury-contaminated glass scrap from the yard and the contaminated soil beneath the scrap to its factory premises for storage.<sup>4</sup>
- ❑ In June 2002 HUL sought permission to clean up the land on the premises of its factory to a residential standard known as the "Dutch standard" of 10 mg/kg (India lacks such standards for mercury contaminated soil).<sup>5</sup>
- ❑ In October 2002 the Working Committee, that was constituted by the TNPCB after the factory was shut down in 2001 and includes representatives of Kodaikanal's residents, states as a decision that "all soil containing more than 10 mg/kg of mercury is removed."<sup>6</sup>
- ❑ In 2003 HUL sent 290 tonnes of mercury-containing material from the factory premises to the US for recycling. It consisted of among others mercury-bearing glass scrap recollected from the

<sup>1</sup> Unilever website, "Kodaikanal, India" <[www.unilever.com/sustainability/environment/topics/kodaikanal-india](http://www.unilever.com/sustainability/environment/topics/kodaikanal-india)> (8 April 2010)

<sup>2</sup> Greenpeace UK website, "Greenpeace accuses Unilever of negligence over mercury poisoning of Indian tourist resort" <<http://preview.tinyurl.com/yb64a3k>> (8 April 2010)

<sup>3</sup> TAAM, Double standards: Unilever's Mercury Fever & Kodaikanal's Ecological Time Bomb, 7 March 2010 <[http://www.sipcotcuddalore.com/downloads/double\\_standards\\_070310.pdf](http://www.sipcotcuddalore.com/downloads/double_standards_070310.pdf)> (8 April 2010)

<sup>4</sup> Unilever website, "Kodaikanal, India"

<sup>5</sup> Ibid.

<sup>6</sup> TAAM, Double standards

scrap yard, semi-finished and finished thermometers, effluent treatment plant waste and elemental mercury.<sup>7</sup>

- ❑ In 2004-2005 HUL sought TNPCB permissions to remediate the soil and also to de-contaminate the thermometer-making equipment at the Kodaikanal site. A proposal to this end was approved by the TNPCB in 2005.<sup>8</sup>
- ❑ In December 2004, next to the Working Committee, another committee, the Local Area Environment Committee (LAEC), was set up to ensure that remediation activities truly protect human health and the environment. However, both committees were allowed to idle after September 2005 despite repeated requests by residents' and ex-workers' representatives to activate these bodies.<sup>9</sup>
- ❑ In September 2005 a Scientific Experts Committee (constituted by the Supreme Court Monitoring Committee) was formed. From that moment onwards, transparency on TNPCB's proceedings on the Unilever matter was lacking. All subsequent meetings were behind closed doors. Reports were not shared, and decisions (eg, on the later relaxed standard) were taken without including or officially dissolving the two oversight committees.<sup>10</sup>
- ❑ In 2006 the plant, machinery and materials used in thermometer manufacturing at the site were decontaminated. The waste was disposed of as scrap to industrial recyclers.<sup>11</sup>
- ❑ In February 2007, Unilever consultant and member of Supreme Court Monitoring Committee NEERI (National Environmental Engineering Research Institute) submitted a protocol for remediation of the mercury contaminated site based on a risk assessment by another Unilever consultant – ERM India Private Ltd.<sup>12</sup>
- ❑ In June 2007, an Experts Committee meeting was convened by TNPCB in which NEERI argued for relaxation of the clean-up standards to 25 mg/kg instead of 10 mg/kg.<sup>13</sup>
- ❑ In July 2008 the NEERI soil remediation proposal was approved by the TNPCB after it had been subject to a number of modifications following advice by TNPCB and the Scientific Experts Committee.<sup>14</sup>
- ❑ In May 2009 pre-remediation work started at the site. The remediation of the soil and the decontamination of buildings at the site will take an estimated 29 months, after which a post-remediation monitoring period is planned.”<sup>15</sup>
- ❑ In October 2009, the ex-Mercury Thermometer Employees Welfare Association along with Tamil Nadu Environment Council, Environmental Scientists Forum and Corporate Accountability Desk of The Other Media organised a briefing in Kodaikanal about the clean-up of the factory. An important factor being that more information was disclosed on the details of the process that had led to the TNPCB acceptance of the remediation protocol with the relaxed standards. This information became progressively available by submissions by Corporate Accountability Desk of The Other Media since 2007 under the Right To Information act. At the meeting it was decided to revive the Tamil Nadu Alliance Against Mercury (TAAM) – a body formed in the immediate aftermath of March 2001 to ensure full settlement of liabilities by Unilever in Kodaikanal – to campaign for a proper and transparent clean-up under this banner.<sup>16</sup>

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<sup>7</sup> Unilever website, “Kodaikanal, India”

<sup>8</sup> Ibid.

<sup>9</sup> TAAM, Double standards

<sup>10</sup> Ibid.

<sup>11</sup> Unilever website, “Kodaikanal, India”

<sup>12</sup> TAAM, Double standards

<sup>13</sup> TAAM, Double standards

<sup>14</sup> Unilever website, “Kodaikanal, India”

<sup>15</sup> Unilever website, “Kodaikanal, India”

<sup>16</sup> TAAM, Double standards

- ❑ In March 2010, TAAM, that was revived in the month before, accused TNPCB and NEERI in a press release “to have colluded with Hindustan Unilever to keep public in the dark and dilute clean-up standards from the originally proposed 10 mg/kg to 25 mg/kg of mercury in soil.” In it TAAM revealed the already above mentioned details (and some other details that had become available under the RTI act) to substantiate its accusation. TAAM also announced to have sent “a strongly worded letter to the TNPCB, Government of Tamil Nadu and Government of India” to demand “the informed participation of local residents in overseeing site remediation” (...) “that all work must be stopped onsite until a Citizens' Oversight Committee is formed, and a public hearing is held in Kodaikanal on the matter of clean-up.” They have also demanded that “the site has to be cleaned to standards befitting a forest ecosystem, and that the site must be handed over to the Forest Department for Shola reforestation.”<sup>17</sup> The Hindu, the second largest English language newspaper in India, reported on the revelations and TAAM’s demands on the day of the press release.<sup>18</sup> Another newspaper reports that the Union Environment Minister Jairam Ramesh is now looking into the matter after prominent Indian citizens urged him to do so in a letter.<sup>19</sup>

### **Role of Unilever**

SOMO has reported on this issue every year in its overviews on controversial business practices since 2006 and as such the issue is not new. However, new findings in 2009, eg, the exclusion of independent stakeholders and the withholding of information in the decision making process, that came to light via Right To Information act submissions has put this lingering case, and also the role of Unilever in it, in a new perspective.

What is clear from these and more recent findings, is, first, that Unilever is misrepresenting facts in its corporate communication<sup>20</sup> which state that remediation of the factory soil is up to international standards (eg, the Dutch residential standard 10 mg/kg) whereas in fact, as TAAM has revealed, it is not. Second, this lowered standard violates Unilever’s own environmental policy (see next section).<sup>21</sup> Third, there are clear indications of collusion in the decision making process that led to the acceptance of the final remediation plan:

- ❑ Important stakeholders such as local residents and ex-workers were excluded from the consultations.<sup>22</sup>
- ❑ The consultants responsible for the remediation proposal and the risk assessment on which this proposal was based, respectively National Environmental Engineering Research Institute and ERM India Private Ltd, were paid by Unilever.<sup>23</sup>
- ❑ Consultants paid by Unilever were represented in the Supreme Court Monitoring Committee (SCMC); the body overseeing decision making and governance in the remediation process.<sup>24</sup>
- ❑ The relaxed standards are clearly in the interest of the Unilever as less stringent clean up standards make the remediation cheaper.

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<sup>17</sup> Sipcot website, “NEERI, TNPCB in Bed with Polluter: Kodai Residents Allege” <[http://www.sipcotcuddalore.com/pr\\_080310.html](http://www.sipcotcuddalore.com/pr_080310.html)> (8 April 2010)

<sup>18</sup> The Hindu, 9 March 2010, “Clean-up standards for toxic mercury leak relaxed”

<sup>19</sup> The New Indian Express, “Mercury Leak: Jairam Assures to Look into Clean-up Standards Issue”, 22 March 2010, <<http://www.indiaenvironmentportal.org.in/content/jairam-assures-look-cleanup-standards-issue>> (8 April 2010)

<sup>20</sup> Unilever website, “Kodaikanal, India”

<sup>21</sup> Unilever website, Unilever Environmental Policy, <[http://www.unilever.com/images/sd\\_Environment-Policy\\_tcm13-212345.pdf](http://www.unilever.com/images/sd_Environment-Policy_tcm13-212345.pdf)> (12 April 2010)

<sup>22</sup> TAAM, Double standards, p 2

<sup>23</sup> TAAM, Double standards, p 3

<sup>24</sup> TAAM, Double standards

With regards to the lack of proper environmental protection, TAAM asked an expert to investigate and assess the argumentation of the NEERI remediation approach that was accepted. The assessment of this toxicologist states that: "The Site-Specific Target Level of 25 mg/kg was established only with regard to the protection of public and without regard to protection of ecological values." Indeed, according to the same expert, a major flaw of NEERI's analyses to arrive at the diluted clean-up standards is that it does not "contain a thorough assessment of the potential for off-site migration of mercury from contaminated soil into the Pambar River and adjacent wetlands."<sup>25</sup>

### ***Normative/legal standard violated***

The issue of double environmental standards for contamination and the whole process around it can be regarded as a violation of Unilever's own environmental policy which is to "exercise the same concern for the environment wherever we operate", "ensure the safety of its products and operations for the environment", "provide relevant information and advice, eg, to our customers and consumers on the environmental impacts of our products and processes," and "remain alert and responsive to developing issues, knowledge and public concerns."<sup>26</sup>

Apart from its own ethical commitments, adherence to internationally agreed standards seem to be at risk, such as for example the "polluter pays" principle laid down in the 1992 Rio Declaration on Environment and Development.<sup>27</sup>

Furthermore, the OECD Guidelines for MNEs' general principle 2 states that enterprises should 'contribute to economic social and environmental progress with a view to achieving sustainable development'. This principle, as well as the OECD Guidelines' environment chapter may be considered to be breached in this specific instance in India. In particular, paragraph 6a of the environment chapter may be breached, which states that enterprises should adopt 'technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise.'<sup>28</sup>

The original dumping of mercury contaminated wastes was a violation of the Indian law under the Hazardous Waste Rules (Management and Handling), 1989.<sup>29</sup>

### ***Comments on the company reaction to the overview***

The elaborate reaction to this overview by Unilever found below puts some of the findings in a somewhat different light. However, it does not change the essence of the major issues raised by TAAM:

Most importantly, according to Unilever, the "Dutch standard" itself has been become less strict from 10 to 36 mg/kg and the ultimate remediation level is set at 20 instead of 25 mg/kg according to the company. However, the standard has in effect still been diluted (and the company has not communicated this properly nor was there proper stakeholder consultation in this process). The

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<sup>25</sup> TAAM, Double standards

<sup>26</sup> Unilever website, Unilever Environmental Policy, <[http://www.unilever.com/images/sd\\_Environment-Policy\\_tcm13-212345.pdf](http://www.unilever.com/images/sd_Environment-Policy_tcm13-212345.pdf)> (12 April 2010)

<sup>27</sup> CSR Platform (2007), CSR Frame of Reference, <<http://mvoplatform.nl/wat-is-mvo/mvo-referentiekader-engels>> p 11

<sup>28</sup> OECD website, The OECD Guidelines for Multinational Enterprises, <<http://www.oecd.org/dataoecd/56/36/1922428.pdf>> (12 April 2010)

<sup>29</sup> Greenpeace UK website, "Greenpeace accuses Unilever of negligence over mercury poisoning of Indian tourist resort" <<http://preview.tinyurl.com/yb64a3k>> (8 April 2010)



question whether the lowered standard is now set too low still depends on the perspective taken. Unilever perspective is from a Dutch residential standards perspective and this is clearly challenged by TAAM. From the company reaction to the overview it also becomes clear that the final decision on the remediation level has still to be taken by the TNPCB.

## Annex 1. Unilever's response to the draft overview<sup>30</sup>

### ISSUE I: Remediation Standard

- ❑ As a preliminary step, to determine whether a site is contaminated or not, various countries have developed a screening criteria list, where the concentrations of various compounds and elements are listed. Upon comparing analytical results against these screening levels, a site is then deemed as contaminated or not. Soil Screening Levels (SSL's) are not national cleanup standards. Clean-up standards are derived based on risk based studies specific to the site. Screening criteria such as the 'intervention value', do not necessarily mean that these would be applicable as the soil cleanup standard or remediation criteria.
- ❑ A standard for soil remediation varies from site to site depending on soil conditions, land use pattern and potential receptors and risks.
- ❑ The Dutch Intervention Value for inorganic mercury in residential land was originally 10 mg/kg in 2001 and has now been revised upwards to 36 mg/kg based on new scientific data and models, revisions of the Dutch Risk Based Intervention levels in 2006.
- ❑ Currently India does not have any accepted numerical standards for either assessing soil contamination nor for determining remediation criteria. Hence, risk based approach for determining the site specific target levels is required.
- ❑ Development of risk based site specific remediation criteria is internationally accepted and followed by various environmental agencies including the USEPA and European Environmental Protection Agencies.
- ❑ The Supreme Court Monitoring Committee in its review meeting held in Feb 2006 directed NEERI to take up a Risk Assessment Study to develop soil remediation criteria for the site. For deciding the Site Specific Target Levels (SSTL), a risk assessment study was constituted by NEERI and ERM, Australia in 2006.
- ❑ Based on the risk assessment study for the subject site, a Site Specific Target Level of 25 mg/kg was derived for future residential land use pattern. Upon submission and further deliberations by the SCMC constituted Scientific Expert Committee, it was recommended that the clean up criteria be set at 20 mg/kg. Based on these recommendations, TNPCB set the cleanup standard at 20 mg/kg.

#### *Further Information for reference*

Some NGOs have challenged the clean-up criteria and complained to the TNPCB, Ministry of Environment and Forests in the State and Central Government. TNPCB and the Scientific Experts Committee during the project review meeting in January 2010 asked NEERI to respond to the queries on clean-up standard and other issues raised by the NGOs on remediation protocol. TNPCB and SEC also wanted three additional studies to be undertaken by national institutions such as Indian Institute of Toxicology Research, Lucknow, for reviewing the risk assessment study and site specific clean-up standard; National Botanical Research Institute, Lucknow, to study the impact on trees and preservation of trees; and Centre for Soil and Water Conservation Research and Training Institute, Ooty, to study the impact on soil and soil erosion. Based on these study findings and results of remediation trials and recommendation of the SEC, the TNPCB will take a final decision on the clean-up standard.

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<sup>30</sup> Unilever response to draft report received on 28 April 2010

## **ISSUE II: Transparency and Stakeholder Involvement**

- ❑ The entire remediation and clean up process is being done under the oversight of the TNPCB and the SCMC/SEC. The SCMC was appointed by the Supreme Court of India and consists of an NGO and technical experts of Government of India.
- ❑ The SCMC constituted a Scientific Experts Committee (SEC) which consists of six senior scientists from different universities around Kodaikanal and national scientific institutions to supervise remedial measures.
- ❑ During decontamination of plant and machinery from February to May 2006, the activities carried out were displayed on a daily basis on a notice board near the factory main gate for public information and weekly progress report on decontamination was shared with Local Area Environmental Committee (LAEC) by TNPCB.

### *More Information For Internal Reference:*

For a clarification sought by LAEC members in July 2005, the SCMC clarified that the protocol for decontamination need not be approved / cleared by the LAEC. The LAEC needs to be informed of the action (relating to decontamination of machineries / remediation of the site) proposed to be undertaken. In environment related issue TNPCB is the statutory regulatory body for Kodaikanal.

## **ISSUE III: HUL Payments to NEERI**

- ❑ HUL did not decide to engage NEERI. NEERI was asked to associate with the remediation measures by the SCMC as an independent expert.
- ❑ The Supreme Court Monitoring Committee in its review meeting held in February 2006 directed NEERI to take up a Risk Assessment Study to develop soil remediation criteria for the site.
- ❑ NEERI as an institution is not a member of the SCMC. The SCMC consists of specific members including the Director of NEERI and a representative from NGO.
- ❑ HUL is paying for all the costs of the cleanup and remediation at the site. The consultancy service rendered by NEERI was paid by HUL in line with this principle.
- ❑ NEERI is not the decision making authority. Decisions are taken by TNPCB. TNPCB involved SEC for scientific inputs wherever required.

### *More Information For Internal Reference:*

HUL is paying NEERI and ERM in line with the principle laid down in the 1992 Rio Declaration on Environment and Development as referred by SOMO in its own report.