

Two decades of Responsible Care: Credible response or comfort blanket?

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The chemical industry's flagship Responsible Care programme – pieced together in response to its worst disaster, in Bhopal 20 years ago – continues to expand to new countries. But it is still failing to deliver public trust in the sector. Parallel global and European reviews aim to breathe new life into the initiative but are hitting fundamental obstacles. Critics point to the programme's obvious flaws and dismiss it as a PR exercise lacking in substance. Yet Responsible Care's supporters say it is achieving things that legislation alone could not.

The twentieth anniversary of the tragedy at Union Carbide's pesticide factory in Bhopal, India, was a prominent news story in the closing weeks of 2004. Bhopal remains one of the world's worst industrial disasters.

Eye-witness stories in print, broadcast and internet media brought back the night – on 3 December 1984 – when up to 30 tonnes of highly toxic methyl isocyanate were released into a densely populated community killing thousands of people within a few days. Estimates range from Union Carbide's 3,800 deaths to Greenpeace's 8,000. NGOs claim 500,000 people were injured and that the legacy of the poisoning is now affecting a third generation of Bhopal's families.

Questions over responsibility for the disaster hit the headlines once more. New evidence and testimonies were reported alleging management failures by Union Carbide. But the company continues to point to an Arthur D Little study following the incident which suggested that the Bhopal plant had been sabotaged. It lists its relief efforts for the victims and points to a \$470 million settlement with the Indian government in 1989. It also stresses that it sold its Indian subsidiary in 1994 and that responsibility for clean-up of the site, which continues to pollute the local environment, lies with the state government of Madhya Pradesh as its current owner.

Another multinational company has now been dragged into the mire. Dow Chemical bought Union Carbide in 2001 and has since stated repeatedly that: "Dow never owned or operated the Bhopal facility and the company has neither a connection to nor legal liability for the tragic events of the 1984 gas release." But this appears not to have deterred many from pressing it on its legal and moral responsibility. Students have mounted mass protests outside Dow's offices in India, and on the 20th anniversary activists organised vigils outside Dow offices world-wide.

Trade magazine *European Chemical News* concluded that: "Immediately after the event the overriding concerns should have been the welfare and just compensation of the inhabitants of Bhopal and the clean-up of the site. Neither has been achieved and, 20 years on, neither looks likely."

Under the heading "Bhopal continues to haunt us", it commented that the incident remains "an unresolved blot on the industry's reputation."

Responsible Care

In the weeks following the incident, emergency meetings were called in many chemical industry boardrooms to assess the likelihood of such an incident happening at other plants. Trade associations quickly recognised that trust in the industry had been demolished and would need to be rebuilt. In this fearful and defensive climate the



Greenpeace/Rai

industry's flagship Responsible Care programme was born.

It started life as a code of practice setting out health, safety and environmental standards for chemical firms and has since developed in most countries into more prescriptive guidance on how to live up to specific aspects of the code.

The Canadian Chemical Producers' Association, which claims credit for officially launching the first Responsible Care programme in 1985, holds the licensing rights for the name and logo. The idea was suggested – by Dow, ironically – four years earlier but it was not until 1984 that CCPA members were willing to put in the resources.

Last December, the CCPA said: "Bhopal was a defining and transformative moment for the chemical industry...and remains today a potent reminder that the industry must pursue continuous improvement to further advance the safety of its processes and products."

The CCPA points to the numerous safety programmes it now has under Responsible Care together with the original codes of practice, claiming that these have "profoundly changed how CCPA member companies and partners manage their operations." The US American Chemistry Council published a very similar statement.

Responsible Care is now licensed by 52 national industry associations. Five East European countries were admitted just last November.

Yet 20 years on from the first Responsible Care programme, it remains a valid question whether the initiative has brought about the profound behavioural changes claimed of it.

Dow Chemicals says it has no liability for the 1984 Bhopal gas release which killed and injured thousands

Making a virtue of necessity

It is difficult to separate the impacts of Responsible Care from those of the legislation affecting the industry. Indeed, the legislation was itself hugely influenced by Bhopal and preceding industrial accidents such as a pesticides plant explosion in Seveso, Italy, in 1976 and the gradual poisoning of a community at the Love Canal toxic waste site in the USA.

One US Environmental Protection Agency initiative that had world-wide repercussions was the "Right to Know" legislation of 1986 which empowered local bodies to request hazard information from industrial facilities in their backyards. The Toxics Release Inventory (TRI) extended this to enable local communities to ask questions of companies about their contributions to pollution. In 1990, amendments to the Clean Air Act required companies to make available "worst-case scenarios" and lists of hazardous chemicals stored on site.

The "right to know" movement galvanised the US chemical industry into publishing environmental reports listing their TRI data with explanations to put them in context and targets to reduce emissions. Firms nevertheless claimed such moves as part of their commitment to Responsible Care.

In Europe, the chemical industry federation (CEFIC) began urging its members to publish similar environmental reports containing release data from 1993, again claiming this as a Responsible Care activity. But it came in response to a consultation paper from the European Commission proposing a European Pollutant Emissions Register (EPER) modelled on the TRI (ENDS Report 217, pp 16-18).

A limited wave of reports from major European chemical firms duly followed. CEFIC began publishing aggregate industry indicators in 1996, just as the EU Directive on integrated pollution prevention and control was adopted, pruned of the detailed release inventory requirements originally envisaged by the European Commission. Debate continued, however, and legislation to implement EPER was eventually agreed in 2000 with the first dataset finally emerging last year (ENDS Report 349, pp 20-22).

As Hilfra Tandy, editor of industry newsletter *Chemical Matters* puts it: "It does seem a little bit as if Responsible Care makes a virtue out of necessity."

Several national and international chemical trade bodies now publish aggregate data under the banner of Responsible Care, usually showing declining emissions from members' facilities. But these can be difficult to interpret due to a number of factors: the effects of environmental legislation; economic influences resulting in structural changes to the industry and their more intricate effects on production output and plant efficiency; and in some cases, an element of "self-selection" among the companies willing to submit data.

In the UK, the Chemical Industries Association – one of the

first associations to begin publishing performance data – said last August that it may not continue with the exercise because structural changes in the industry are making it harder to show trends. It also concedes that the "easy wins" have mostly been achieved (ENDS Report 355, pp 20-24). However, the CIA intends to continue to contribute data for CEFIC's reporting exercise.

Building a better case

In the USA, the ACC has grasped the need to sell the benefits of Responsible Care more convincingly. It has begun making a point of distinguishing the performance of its members, for whom adherence to Responsible Care is mandatory, from that of chemical firms that have not signed up to the programme but are subject to the same legislation.

A recent edition of US trade magazine *Chemical and Engineering News* quotes the ACC's vice-president for Responsible Care Terry Yosie, saying: "Our members get blamed for the shortcomings of the rest of the [chemical] industry. Government needs to do more to crack down on companies that don't adopt Responsible Care."

The ACC has published data showing that occupational injury and illness incidence rates are significantly better within member companies – for whom commitment to Responsible Care is mandatory – than within other chemical firms (see Figure 1).

Last year, the ACC imposed further requirements on its members to respond to calls for greater transparency. They must now commit to third party certification of their sites either based on the industry's own Responsible Care Management System or based on a hybrid Responsible Care/ISO14001 system. They must also agree to the publication of company-specific data on safety, product management and the environment on a dedicated Responsible Care website to enable benchmarking.¹

As well as responding to public scepticism, such moves are deemed necessary for trade associations to begin building a better business case for companies adopting Responsible Care. Clearer performance differentials between those that adopt the programme and those that do not will make it easier to win regulatory and financial rewards for the participants.

Despite the ACC's moves, NGOs in the USA remain to be convinced that the industry is any safer. The US Public Interest Research Group published a report last year entitled *Irresponsible Care: The failure of the chemical industry to protect the public from chemical accidents*,² in which it selected accident reports attributable to current ACC member company facilities from the National Response Center's database.

It concluded that "since 1990...accidents have not declined at ACC member companies' facilities." It calculates the total number of accidents in that time at some 25,188 or around five a day. It is important to note that the raw numbers mask a wide range of reportable incidents from oil discharges to major accidents with fatalities (see Figure 2).

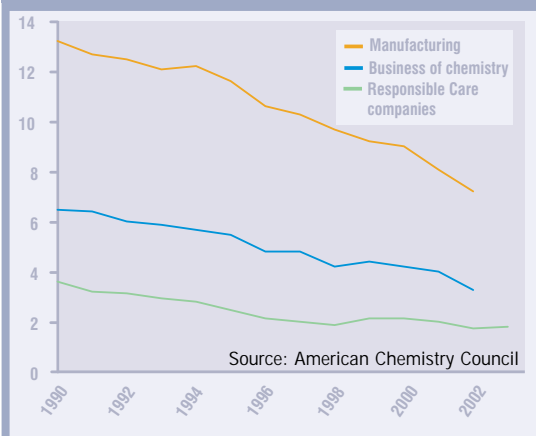
US PIRG concluded that Responsible Care as a voluntary programme is not sufficiently accountable and fails to set high enough standards.

Moreover, the group argued that no amount of voluntary or legislative effort will ever be enough as long as hazardous chemicals continue to be produced and used. Responsible Care, it said, "fails to address the single most important step chemical companies can take to make their

"Government needs to do more to crack down on companies that don't adopt Responsible Care"

– Terry Yosie, American Chemistry Council

Figure 1: Recordable occupational injury and illness incidence rates



facilities less vulnerable to accidents and attack – using inherently safer chemicals and technology.” It called for new legislation to bring about such substitutions.

In Europe, CEFIC also now makes some comparisons between companies signed up to Responsible Care and those that are not, in its latest performance report for 2003-2004.

Indicators recorded since 1996 show a year-on-year improvement in lost-time injury frequency rate. In 2001, CEFIC notes, companies submitting data to its Responsible Care performance indicators recorded a rate of 1,246 cases per 100,000 employees compared with Eurostat statistics of 1,923 for chemical manufacturing and 4,280 for manufacturing as a whole.

Less convincing is the evidence on fatalities. There is no clear downward trend, even if the catastrophic explosion at Atofina's Grande Paroisse fertiliser plant in Toulouse, France in 2001, which killed 30 people, is taken out of the picture.

Toulouse explosion

In the courts, Atofina, now Arkema, is continuing to dispute the theory that an accidental mixture of chlorine derivatives and ammonium nitrate caused the explosion. Its parent company nevertheless rapidly paid out substantial sums in compensation and funded relief work in Toulouse.

Thierry Desmarest, president of Atofina's parent TotalFinaElf at the time, visited the Toulouse site on the day of the explosion, recording his reaction in an unusually emotional press statement: “The explosion is an appalling tragedy. It is a scene of shocking devastation, like a vision of horror. My initial thoughts go to the victims and their families, as well as to all the people of Toulouse who have been struck by this tragedy.”

According to an Arkema statement in September 2003, the full scale of the disaster was: 30 dead, 9,000 people injured, 5,200 companies and 53,500 homes impacted, 200,000 people involved, 9,000 vehicles damaged or destroyed.

Yet there is scant mention of the accident in Atofina's 2003 sustainability report, which states that “Atofina adheres to Responsible Care in all countries where such a programme is implemented.” Statistics in its section on safety headed “in full control of our operations”, show a beguiling year-on-year reduction in recordable injury rates since 1999, but do not include the fatalities or injuries in 2001. The year is simply missed out of a timeline putting in context Atofina's activities on sustainable development from 1987 to 2003.

The report says Atofina is committed to continuous improvement of safety at its operations and notes without background explanation that a world-wide HSE management project was launched in 2002 and that expenditure of €500 million was approved over four years to reinforce risk control across all operations. It includes only a brief statement on redeployment of personnel from the Toulouse plant under a separate section on “assisting our teams”.³

The Toulouse accident and others where fatalities have occurred show that these can and do happen at facilities owned by Responsible Care companies, even in developed countries. Atofina's 2003 sustainability report suggests that the programme's forward-looking focus on continuous improvement can at times be exploited at the expense of accounting responsibly for the past.

Other examples of companies that have not lived up to

the promise of Responsible Care are not that difficult to find. In the UK, in 2003 the management at BP's Grangemouth site was heavily criticised by the Health and Safety Executive which investigated the causes of an explosion in 2000. It concluded that the company had “failed to achieve the operational control and maintenance of processes and systems required by law” and had not lived up to the high expectations raised by its corporate policies (ENDS Report 344, pp 6-7).

Another UK company Sevalco – a subsidiary of US firm Columbian Chemicals – was ordered to pay £310,000 in fines and costs in December after it pleaded guilty to six offences resulting in releases of cyanide into the Severn Estuary (ENDS Report 359, pp 23-26). An Environment Agency press statement concluded that: “Despite knowing about the high cyanide levels for several years the management at Sevalco did not inform us and continued to hide the problem with no regard for the impact it could have had on the Severn Estuary”.

The two cases illustrate more than a momentary failure in the management of chemical installations, yet BP and Sevalco – as members of the CIA – are deemed to be Responsible Care companies. But, according to the trade body: “Commitment by the CIA membership is total. Adherence to the principles and objectives of Responsible Care is a condition of membership.”

The sanctions question

The failure to act against those not adhering to its codes of practice is a major flaw of the Responsible Care programme.

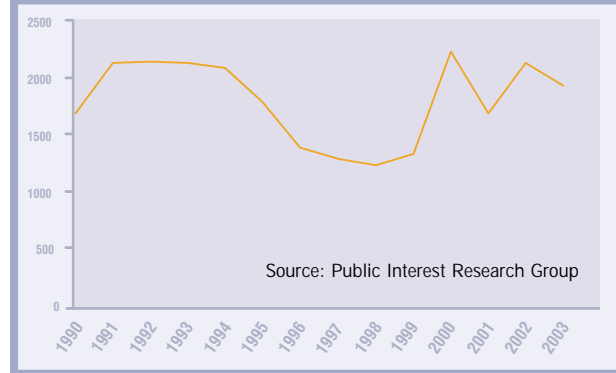
John Elkington, chairman of consultancy SustainAbility, describes the lack of sanctions for non-compliance as a “vacuum” at the heart of Responsible Care. He points out that other corporate social responsibility initiatives are learning that this is unacceptable.

The UN Global Compact, a younger and less prescriptive programme of ethics for leading multinational businesses, has now publicly adopted “integrity measures” to respond to demands for transparency and accusations of it being a “bluewash” initiative. While these are far from stringent, they are a start. For example, should a signatory fail to report for two years running on its progress against the Compact's principles it will be removed from membership until it has done so.

Others concede that some companies are undermining the initiative. According to Hilfra Tandy, “there are still too many companies where the chief and board members are not generally committed to the concept of Responsible Care.” Debbie Jackson, editor of Responsible Care magazine *Careline*, acknowledges that there are companies that “only pay lip service” to the initiative and that they are damaging the genuine efforts of many others.

Yet when asked about the sanctions issue, the chemical industry's trade bodies often refuse to discuss

Figure 2: Number of accidents at facilities owned by ACC member companies



The lack of sanctions for non-compliance is a “vacuum” at the heart of Responsible Care

– John Elkington, SustainAbility



The 2001 Toulouse incident showed that accidents continue to happen – even to Responsible Care companies

specific cases and argue that it is better to keep non-complying firms within the association where they can be monitored and helped to improve, than to expel them. They insist that peer pressure is brought to bear upon such companies behind closed doors.

But another unspoken factor is that most of the world's chemical trade bodies can ill-afford to lose membership fees right now. Many have "streamlined" themselves to cope with falling revenues and are prioritising their work in a bid to remain relevant to their members (ENDS Report 355, pp 20-24).

Breathing new life

Industry associations have recognised that all is not well with their flagship programme. They have just completed fundamental global and European reviews of Responsible Care.⁴ An initial component of these was a global survey of stakeholder opinion commissioned by the International Council of Chemical Associations (ICCA) and carried out by SustainAbility which concluded that the industry is still considered at best to be "a necessary evil".

Mr Elkington says it is a "dramatic" finding that after two decades of Responsible Care there should still be so little trust in the industry. He feels that after giving an initial brief lead to other sectors on corporate responsibility, the programme failed to maintain the vision to make real progress. He says that few chemical companies are seen as leaders on sustainable development today.

He characterises Responsible Care as a "comfort blanket" for the industry – something to hold up in the face of the many disparate challenges facing its highly varied membership.

José-Maria Bach, chairman of the ICCA's Responsible Care leadership group and head of the programme at CEFIC, said the survey finding had not come as a surprise given the other indications around. Nevertheless, it has pushed CEFIC and the ICCA to try to do something about it.

Transparency and accountability emerged from the review as key issues to tackle. In his speech to CEFIC's Responsible Care conference last November, Mr Bach said the programme had enabled the industry to respond to public concerns about its operations since the 1980s but it had also become "inwardly focused" and perceived

as the job of HSE departments rather than as a corporate undertaking.

In an attempt to breathe new life into the brand, a "global Responsible Care charter" will be launched in 2005 to reconfirm industry commitment. Chief executives will be expected to sign the charter pledging continued improvement on health, safety and environmental performance but also to a "strong governance process" to demonstrate that companies are living up to their commitments.

Yet in Europe, CEFIC ran up against strong opposition from some members in its aims to bolster the governance process. Fundamentally, it failed to secure agreement that commitment to Responsible Care should be a condition of membership for all national chemical trade associations in Europe. Currently only six associations in Europe insist on companies signing up to Responsible Care, and 16 do not. According to CEFIC, companies made it clear that they would like to be able to draw on the services of trade bodies without having to commit to Responsible Care.

Mr Bach describes the issue as "difficult" and the outcome as "a compromise" to get other aspects of the review through. He says he is "personally disappointed" that members could not accept the condition.

Members have accepted that those companies that are signatories to Responsible Care should be required to carry out self-assessment against its codes and guidance. Mr Bach says this is a first step. He is surprisingly confident that in time companies will open up to allow spot checks by peers and even to reviews by independent external verifiers. In Europe, he argues, cultural differences make it difficult to go as fast and as far as the associations in the USA and Canada.

CEFIC is aiming to iron out some of the variations in national Responsible Care programmes within Europe so that it can more convincingly sell it as a pan-European programme.

As CEFIC puts it, the variability "makes an assessment of the efforts of the industry difficult for our stakeholders to understand and as a consequence Responsible Care performance is not being rewarded adequately with their positive feedback. This in turn leads to reduced benefits to companies and a lower commitment to the initiative." Like the ACC, it has appreciated the necessity of building a better business case.

Another output of the review is the creation of a European advisory panel to give it candid feedback and direction. According to Mr Bach this will be set up by the spring and will comprise stakeholders from all sections of the public. CEFIC is still deciding its terms of reference and Mr Bach could not say what degree of freedom panellists would be given to speak publicly. However, he said, "the intention is not to keep its work a secret".

Product stewardship

CEFIC has spotlighted product stewardship as the major focus for Responsible Care for the next five years, one which it describes as "crucial to our future." This is expected to include establishing guidelines, implementation tools and setting minimum requirements for signatories.

Mr Bach says the aim is to adopt responsibility for products down the supply chain. He denies that this is simply a response to the EU's pending REACH regime on the registration and authorisation of chemicals which also seeks to place a stronger duty on companies to

assess and communicate the risks posed by their chemicals down the supply chain.

Rather, he says, REACH is a consequence of the industry's failure to come up with convincing product stewardship initiatives in the past, despite the fact that it has been a Responsible Care goal for years. He says this was always a difficult area because it involved the industry forming partnerships with other sectors such as distributors and users of its chemicals and getting their buy-in to the programme. Ironically, given CEFIC's lobbying against several aspects of the REACH proposal, he feels the legislation will help the industry to achieve its goals in future, by generating the information companies need to manage their products.

Why bother?

As the ICCA and CEFIC try to revitalise Responsible Care, one is tempted to ask, if companies themselves are becoming jaded by the programme, why not let it wither away?

Debbie Jackson at *Careline* feels the answer is that companies have seen the programme achieve things that legislation could not. She points to the mutual support networks that have been created by trade bodies. For example, some countries like the UK have Responsible Care "cells" clustered around industrial areas that seek to keep local firms – particularly SMEs – up to date with legislative developments and best practice.

She argues that the tracking by trade associations of company performance – for all its flaws – is also a positive influence on firms. When they submit data they know that it will be reviewed and commented upon by industry experts, if not shared with the outside world.

She points out that some countries are more effective at peer review than others. In Norway companies are able to vet each other's data on a "members only" website so that they can see who is reporting and who is not and what they are claiming.

Mutual assistance is also operating at international level – CEFIC has hosted educational initiatives for trade associations in EU accession countries in order to spread good practice more quickly. Companies have shared experts at no cost with their counterparts in other countries. The ICCA has the authority to organise pan-industry research programmes such as the one on testing of high-production volume chemicals, which regulators would have found difficult.

In her experience, she says she knows of many companies that are genuinely trying to "live the ethic of Responsible Care", although many are not. She concludes that: "Responsible Care is open to criticism but it is better than doing nothing."

Critics have a simpler answer to the question – lobbying. They point to the opportunistic development of each new initiative in Responsible Care as public and regulatory pressure has mounted. They also point to trade associations using the initiative as a lobbying tool. In 2003, the CCPA's national advisory panel on Responsible Care rapped the body's knuckles for joining an industry coalition lobbying against Canada's early ratification of the Kyoto Protocol on climate change. It warned the association to "develop a process to ensure congruency between

CCPA legislative positions and Responsible Care".

It is also clear that trade associations are more fervently looking for some pay-back for their members for putting resources into Responsible Care. The CIA recently won the prospect of cheaper premiums from members of the Association of British Insurers for companies who have implemented Responsible Care management systems. Since making third party certification of management systems and individual company reporting mandatory, the ACC has secured participation of the sector in the EPA's Performance Track programme. This brings the rewards of a lighter touch, more consultative relationship with the regulator. CEFIC says it is looking for similar rewards in Europe.

Bhopal legacy

It is clear that many in the industry believe that Responsible Care can be made to meet expectations and change public perception of the sector. More effective in the short term may be the millions of dollars the ACC and other associations are planning to spend on advertising the benefits of chemicals in the coming months.

But it is also as evident today as it was 20 years ago that the industry remains as strong as its weakest links. Union Carbide's chief executive Robert Kennedy in the early days of Responsible Care urged the public not to trust the industry but to track it.

Tracking it shows that accidents continue to happen – even to Responsible Care companies. The risks of chemicals continue to be uncovered – probably more so under REACH. Moreover, the majority of chemical firms in most countries do not belong to trade associations and

remain beyond the reach of Responsible Care. While this is the case, it is improbable that public perception will be won around.

Over this scenario continues to hang the shadow of Bhopal. A new report by SustainAbility on the changing landscape of liability (see pp 9-10) warns that Union Carbide and Dow should not bank on a quiet ride given societal trends towards "intergenerational justice" and as expectations for companies to accept moral as well as legal responsibility increase. Brand value has become many companies' most important asset and this makes them increasingly vulnerable to such trends.

The lessons for the two companies are naturally being extrapolated to the rest of the industry. In a recent BBC documentary, India correspondent Sir Mark Tully concluded: "Twenty years on the world's worst industrial disaster still has to teach us how to ensure that multinationals are responsible for their operations in whatever part of the world they may be."

ENDS

¹ <http://www.responsiblecare-us.com/>

² *Irresponsible Care: The failure of the chemical industry to protect the public from chemical accidents*, at <http://uspirg.org/reports/IrresponsibleCare2004.pdf>

³ Available at: http://www1.arkemagroup.com/Service/tele/download/grp1/Report_DD_2003_VA.pdf

⁴ Available at: <http://www.cefic.be/Templates/shwStory.asp?NID=3&HID=314&PHID=8>

"Twenty years on Bhopal still has to teach us how to ensure that multinationals are responsible for their global operations"

– Mark Tully, BBC



Responsible Care