April 11, 2003

The Honorable Christine Todd Whitman
Administrator
U.S. Environmental Protection Agency
Washington, D.C.

Re: DuPont's failure to submit key health studies under the requirements of TSCA 8(e), 15 U.S.C. § 2607(e).

Dear Administrator Whitman:

As your Agency moves forward with its assessment of public health risks posed by the Teflon-associated chemical known as PFOA (perfluorooctanoic acid, also called C8), we write to notify you of apparent violations of reporting requirements under Section 8(e) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2607(e), by a leading manufacturer and user of PFOA, DuPont, that may be hindering your assessment. We request that you investigate these potential violations of law by DuPont, and require full submission of the relevant studies to the public record to allow for an accurate assessment of the health risks posed by this persistent global pollutant that widely contaminates human blood. Given the nature and seriousness of the omissions, we recommend that the Agency levy the maximum allowable penalty under the law, a $25,000 fine per day to account for civil violations pursuant to 15 U.S.C § 2615 (a). We also ask that you investigate potential criminal violations for DuPont's knowing and willing failure to produce these studies, which would also subject the company to a maximum daily fine of $25,000. Id. at § 2615 (b).

In a 1981 internal company study (attached as Exhibit A) DuPont found quantifiable levels of PFOA in umbilical cord blood from one baby, and the blood of another baby, both of whom were born to women working in the company's Teflon plant in Parkersburg, West Virginia. This study provided evidence that PFOA crosses the placenta and exposes a fetus in utero, at a time when DuPont had accumulated a significant body of knowledge on the toxicity of PFOA.

The study documentation, made public through litigation, shows that DuPont measured PFOA in the blood of eight pregnant women employed at the plant, and for seven of these women recorded information on the baby's health after birth. DuPont found quantifiable levels of PFOA in the blood of seven of eight women tested, at concentrations ranging up to 2.5 parts per million (ppm). DuPont found PFOA in umbilical cord blood from one baby at a concentration of 0.055 ppm, and in the blood of another baby at a concentration of 0.012 ppm. The study documentation shows that two of seven women gave birth to babies with birth defects, one an "unconfirmed" eye and tear duct defect, and one a nostril and eye defect. That same year, DuPont reassigned 50 women at the plant to reduce PFOA exposure. We have thoroughly reviewed 8(e) submissions from DuPont regarding PFOA, and find no record of this study in the Agency's files.

TSCA requires that a company inform the Administrator when it finds information "that reasonably supports the conclusion that such substance...presents a substantial risk of injury to health." 15 U.S.C § 2607(e). Given the unique susceptibility of a fetus to permanent health harms from exposures to industrial chemicals, the finding of an industrial chemical in umbilical cord blood inherently qualifies as "information that reasonably supports the conclusion that such substance...presents a substantial risk of injury to health..." and therefore should trigger a submission of the study to EPA

under the provisions of TSCA 8(e). In the case of DuPont's 1981 blood study, however, the company also possessed at the time a significant body of knowledge on PFOA's toxicity that further supported what should have been a reasonable conclusion that the blood tests indicated a substantial risk to health.

According to a 1961 internal company memorandum on the toxicity of C8 and related chemicals, another document made public through litigation, a DuPont toxicologist found that "C8 and C9 acids... have the ability to increase the size of the liver of rats at low doses," and further recommends that "all of these materials...be handled with extreme care. Contact with the skin should be strictly avoided" (DuPont 1961). Between 1961 and 1981 DuPont and its PFOA supplier (3M) conducted or summarized 32 additional PFOA toxicity studies in dogs, rats, monkeys, guinea pigs, rabbits, and mice (Bilott 2002).

Among other studies that DuPont failed to submit to EPA under requirement of law are the company's studies of PFOA contamination in drinking water supplies in areas surrounding its Parkersburg, West Virginia plant (see DuPont documents at EWG 2002). Upon information and belief, DuPont's 1981 study of PFOA in babies' blood, and their finding of PFOA contamination in tap water, are just two of the health and safety studies conducted by DuPont beginning at least 22 years ago that the company failed to submit to EPA under the requirements of TSCA Section 8(e). 15 U.S.C § 2607(e).

We appreciate your prompt attention to the concerns we raise in this letter, and hope that the full record of PFOA's toxicity to humans will soon be available to the public and Agency as you proceed with your assessment of human health risks posed by the chemical.

Sincerely,

[signed]

Kenneth A. Cook
President, Environmental Working Group

cc: Charles O. Holliday, Jr., Chairman & CEO, DuPont
Steve Johnson, EPA's Assistant Administrator for Prevention, Pesticides, and Toxic Substances

References

Bilott, R. 2002. Letter from Robert A. Bilott of Taft, Stettinium, & Hollister LLP to IRIS Submission Desk. IRIS Submission Inventory for Perfluorooctanoic Acid – Ammonium Salt. April 12 2002.

DuPont. 1961. Internal memo Re Toxicity of Teflon® Dispersing Agents.

Environmental Working Group (EWG). 2002. DuPont Hid Teflon® Pollution for Decades. Available online at http://www.ewg.org/policymemo/20021113/20021213.php. December 12 2002.

Attachment

Exhibit A. DuPont. 1981. Births and Pregnancies. (Documentation of DuPont study of PFOA in the blood of female employees and their babies.)