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October 15, 1992

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Office of Pollution Prevention and Toxics  
Environmental Protection Agency  
401 M Street., S.W.  
Washington, D.C. 20460  
Attn: Section 8(e) Coordinator (CAP Agreement)

Dear Coordinator:

8ECAP-0025

On behalf of the Regulatee and pursuant to Unit II B.1.b., Unit II B.2.a. (human effects) and Unit II C of the 6/28/91CAP Agreement, E.I. Du Pont de Nemours and Co. hereby submits (*in triplicate*) the attached studies. Submission of this information is voluntary and is occasioned by unilateral changes in EPA's standard as to what EPA now considers as reportable information. Regulatee's submission of information is made solely in response to the new EPA §8(e) reporting standards and is not an admission: (1) of TSCA violation or liability; (2) that Regulatee's activities with the study compounds reasonably support a conclusion of substantial health or environmental risk or (3) that the studies themselves reasonably support a conclusion of substantial health or environmental risk.

The "Reporting Guide" creates new TSCA 8(e) reporting criteria which were not previously announced by EPA in its 1978 Statement of Interpretation and Enforcement Policy, 43 Fed Reg 11110 (March 16, 1978). The "Reporting Guide states criteria which expands upon and conflicts with the 1978 Statement of Interpretation. Absent amendment of the Statement of Interpretation, the informal issuance of the "Reporting Guide" raises significant due processes issues and clouds the appropriate reporting standard by which regulated persons can assure TSCA Section 8(e) compliance.

For Regulatee,

Mark H. Christman  
Counsel  
Legal D-7158  
1007 Market Street  
Wilmington, DE 19898  
(302) 774-6443

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3/30/95

**ATTACHMENT 1**

Submission of information is made under the 6/28/91 CAP Agreement, Unit II. This submission is made voluntarily and is occasioned by recent changes in EPA's TSCA §8(e) reporting standard; such changes made, for the first time in 1991 and 1992 without prior notice and in violation of Regulatee's constitutional due process rights. Regulatee's submission of information under this changed standard is not a waiver of its due process rights; an admission of TSCA violation or liability, or an admission that Regulatee's activities with the study compounds reasonably support a conclusion of substantial risk to health or to the environment. Regulatee has historically relied in good faith upon the 1978 Statement of Interpretation and Enforcement Policy criteria for determining whether study information is reportable under TSCA §8(e), 43 Fed Reg 11110 (March 16, 1978). EPA has not, to date, amended this Statement of Interpretation.

After CAP registration, EPA provided the Regulatee the June 1, 1991 "TSCA Section 8(e) Reporting Guide". This "Guide" has been further amended by EPA, EPA letter, April 10, 1992. EPA has not indicated that the "Reporting Guide" or the April 1992 amendment supersedes the 1978 Statement of Interpretation. The "Reporting Guide" and April 1992 amendment substantively lowers the Statement of Interpretation's TSCA §8(e) reporting standard<sup>2</sup>. This is particularly troublesome as the "Reporting Guide" states criteria, applied retroactively, which expands upon and conflicts with the Statement of Interpretation.<sup>3</sup> Absent amendment of the Statement of Interpretation, the informal issuance of the "Reporting Guide" and the April 1992 amendment clouds the appropriate standard by which regulated persons must assess information for purposes of TSCA §8(e).

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<sup>2</sup>In sharp contrast to the Agency's 1977 and 1978 actions to soliciting public comment on the proposed and final §8(e) Policy, EPA has unilaterally pronounced §8(e) substantive reporting criteria in the 1991 Section 8(e) Guide without public notice and comment. See 42 Fed Reg 45362 (9/9/77), "Notification of Substantial Risk under Section 8(e): Proposed Guidance".

<sup>3</sup>A comparison of the 1978 Statement of Interpretation and the 1992 "Reporting Guide" is appended.

Throughout the CAP, EPA has mischaracterized the 1991 guidance as reflecting "longstanding" EPA policy concerning the standards by which toxicity information should be reviewed for purposes of §8(e) compliance. Regulatee recognizes that experience with the 1978 Statement of Interpretation may cause a review of its criteria. Regulatee supports and has no objection to the Agency's amending reporting criteria *provided that* such amendment is not applied to the regulated community in an unfair way. However, with the unilateral announcement of the CAP under the auspices of an OCM enforcement proceeding, EPA has wrought a terrific unfairness since much of the criteria EPA has espoused in the June 1991 Reporting Guide and in the Agency's April 2, 1992 amendment is new criteria which does not exist in the 1978 Statement of Interpretation and Enforcement Policy.

The following examples of new criteria contained in the "Reporting Guide" that is not contained in the Statement of Interpretation follow:

- o even though EPA expressly disclaims each "status report" as being preliminary evaluations that should not be regarded as final EPA policy or intent<sup>4</sup>, the "Reporting Guide" gives the "status reports" great weight as "sound and adequate basis" from which to determine mandatory reporting obligations. ("Guide" at page 20).
- o the "Reporting Guide" contains a matrix that establishes new numerical reporting "cutoff" concentrations for acute lethality information ("Guide" at p. 31). Neither this matrix nor the cutoff values therein are contained in the Statement of Interpretation. The regulated community was not made aware of these cutoff values prior to issuance of the "Reporting Guide" in June, 1991.
- o the "Reporting Guide" states new specific definitional criteria with which the Agency, for the first time, defines as 'distinguishable neurotoxicological effects'; such criteria/guidance not expressed in the 1978 Statement of Interpretation.<sup>5</sup>
- o the "Reporting Guide" provides new review/ reporting criteria for irritation and sensitization studies; such criteria not previously found in the 1978 Statement of Interpretation/Enforcement Policy.
- o the "Reporting Guide" publicizes certain EPA Q/A criteria issued to the Monsanto Co. in 1989 which are not in the Statement of Interpretation; have never been published in the Federal Register or distributed by the EPA to the Regulatee. Such Q/A establishes new reporting criteria not previously found in the 1978 Statement of Interpretation/Enforcement Policy.

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<sup>4</sup>The 'status reports' address the significance, if any, of particular information reported to the Agency, rather than stating EPA's interpretation of §8(e) reporting criteria. In the infrequent instances in which the status reports contain discussion of reportability, the analysis is invariably quite limited, without substantial supporting scientific or legal rationale.

<sup>5</sup> See, e.g., 10/2/91 letter from Du Pont to EPA regarding the definition of 'serious and prolonged effects' as this term may relate to transient anesthetic effects observed at lethal levels; 10/1/91 letter from the American Petroleum Institute to EPA regarding clarification of the Reporting Guide criteria.

In discharging its responsibilities, an administrative agency must give the regulated community fair and adequate warning to as what constitutes noncompliance for which penalties may be assessed.

Among the myriad applications of the due process clause is the fundamental principle that statutes and regulations which purport to govern conduct must give an adequate warning of what they command or forbid.... Even a regulation which governs purely economic or commercial activities, if its violation can engender penalties, must be so framed as to provide a constitutionally adequate warning to those whose activities are governed.

Diebold, Inc. v. Marshall, 585 F.2d 1327, 1335-36 (D.C. Cir. 1978). See also, Rollins Environmental Services (NJ) Inc. v. U.S. Environmental Protection Agency, 937 F. 2d 649 (D.C. Cir. 1991).

While neither the are rules, This principle has been applied to hold that agency 'clarification', such as the Statement of Interpretation, the "Reporting Guide" nor the April 1992 amendments will not applied retroactively.

...a federal court will not retroactively apply an unforeseeable interpretation of an administrative regulation to the detriment of a regulated party on the theory that the post hoc interpretation asserted by the Agency is generally consistent with the policies underlying the Agency's regulatory program, when the semantic meaning of the regulations, as previously drafted and construed by the appropriate agency, does not support the interpretation which that agency urges upon the court.

Standard Oil Co. v. Federal Energy Administration, 453 F. Supp. 203, 240 (N.D. Ohio 1978), aff'd sub nom. Standard Oil Co. v. Department of Energy, 596 F.2d 1029 (Em. App. 1978):

The 1978 Statement of Interpretation does not provide adequate notice of, and indeed conflicts with, the Agency's current position at §8(e) requires reporting of all 'positive' toxicological findings without regard to an assessment of their relevance to human health. In accordance with the statute, EPA's 1978 Statement of Interpretation requires the regulated community to use scientific judgment to evaluate the significance of toxicological findings and to determining whether they reasonably support a conclusion of a substantial risk. Part V of the Statement of Interpretation urges persons to consider "the fact or probability" of an effect's occurrence. Similarly, the 1978 Statement of Interpretation stresses that an animal study is reportable only when "it contains reliable evidence ascribing the effect to the chemical." 43 Fed Reg. at 11112. Moreover, EPA's Statement of Interpretation defines the substantiality of risk as a function of both the seriousness of the effect and the probability of its occurrence. 43 Fed Reg 11110 (1978). Earlier Agency interpretation also emphasized the "substantial" nature of a §8(e) determination. See 42 Fed Reg 45362, 45363

(1977). [Section 8(e) findings require "extraordinary exposure to a chemical substance...which critically imperil human health or the environment"].

The recently issued "Reporting Guide" and April 1992 Amendment guidance requires reporting beyond and inconsistent with that required by the Statement of Interpretation. Given the statute and the Statement of Interpretation's explicit focus on substantial human or environmental risk, whether a substance poses a "substantial risk" of injury requires the application of scientific judgment to the available data on a case-by-case basis.

If an overall weight-of-evidence analysis indicates that this classification is unwarranted, reporting should be unnecessary under §8(e) because the available data will not "reasonably support the conclusion" that the chemical presents a substantial risk of serious adverse consequences to human health.

Neither the legislative history of §8(e) nor the plain meaning of the statute support EPA's recent lowering of the reporting threshold that TSCA §8(e) was intended to be a sweeping information gathering mechanism. In introducing the new version of the toxic substances legislation, Representative Eckhart included for the record discussion of the specific changes from the version of H. R. 10318 reported by the Consumer Protection and Finance Subcommittee in December 1975. One of these changes was to modify the standard for reporting under §8(e). The standard in the House version was changed from "causes or contributes to an unreasonable risk" to "causes or significantly contributes to a substantial risk". This particular change was one of several made in TSCA §8 to avoid placing an undue burden on the regulated community. The final changes to focus the scope of Section 8(e) were made in the version reported by the Conference Committee.

The word "substantial" means "considerable in importance, value, degree, amount or extent". Therefore, as generally understood, a "substantial risk" is one which will affect a considerable number of people or portion of the environment, will cause serious injury and is based on reasonably sound scientific analysis or data. Support for the interpretation can be found in a similar provision in the Consumer Product Safety Act. Section 15 of the CPSA defines a "substantial product hazard" to be:

"a product defect which because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise, creates a substantial risk of injury to the public."

Similarly, EPA has interpreted the word 'substantial' as a quantitative measurement. Thus, a 'substantial risk' is a risk that can be quantified, *See*, 56 Fed Reg 32292, 32297 (7/15/91). Finally, since information pertinent to the exposure of humans or the environment to chemical substances or mixtures may be obtained by EPA through Sections 8(a) and 8(d) regardless of the degree of potential risk, §8(e) has specialized function. Consequently, information subject to §8(e) reporting should be of a type which would lead a reasonable man to conclude that some type action was required immediately to prevent injury to health or the environment.

## Attachment

**Comparison:**

Reporting triggers found in the 1978 "Statement of Interpretation/ Enforcement Policy", 43 Fed Reg 11110 (3/16/78) and the June 1991 *Section 8(e) Guide*.

| <u>TEST TYPE</u>                               | <u>1978 POLICY<br/>CRITERIA EXIST?</u> | <u>New 1991 GUIDE<br/>CRITERIA EXIST?</u> |
|--|--|---|
| <b>ACUTE LETHALITY</b>                         |  |   |
| Oral   | N}                                     | Y}  |
| Dermal   | N}                                     | Y}  |
| Inhalation (Vapors)                            | } <sup>6</sup>                         | } <sup>7</sup>                            |
| aerosol  | N}                                     | Y}  |
| dusts/ particles                               | N}                                     | Y}  |
| <b>SKIN IRRITATION</b>                         | N                                      | Y <sup>8</sup>                            |
| <b>SKIN SENSITIZATION (ANIMALS)</b>            | N                                      | Y <sup>9</sup>                            |
| <b>EYE IRRITATION</b>                          | N                                      | Y <sup>10</sup>                           |
| <b>SUBCHRONIC<br/>(ORAL/DERMAL/INHALATION)</b> | N                                      | Y <sup>11</sup>                           |
| <b>REPRODUCTION STUDY</b>                      | N                                      | Y <sup>12</sup>                           |
| <b>DEVELOPMENTAL TOX</b>                       | Y <sup>13</sup>                        | Y <sup>14</sup>                           |

<sup>6</sup>43 Fed Reg at 11114, comment 14:

"This policy statements directs the reporting of specific effects when unknown to the Administrator. Many routine tests are based on a knowledge of toxicity associated with a chemical. Unknown effects occurring during such a range test may have to be reported if they are those of concern to the Agency and if the information meets the criteria set forth in Parts V and VII."

<sup>7</sup>Guide at pp.22, 29-31.

<sup>8</sup>Guide at pp-34-36.

<sup>9</sup>Guide at pp-34-36.

<sup>10</sup>Guide at pp-34-36.

<sup>11</sup>Guide at pp-22; 36-37.

<sup>12</sup>Guide at pp-22

<sup>13</sup>43 Fed Reg at 11112

"Birth Defects" listed.

<sup>14</sup>Guide at pp-22

|                        |                  |                 |
|------------------------|------------------|-----------------|
| NEUROTOXICITY          | N                | Y <sup>15</sup> |
| CARCINOGENICITY        | Y <sup>16</sup>  | Y <sup>17</sup> |
| MUTAGENICITY           |                  |                 |
| <i>In Vitro</i>        | Y <sup>18</sup>  | Y <sup>19</sup> |
| <i>In Vivo</i>         | Y}               | Y}              |
| ENVIRONMENTAL          |                  |                 |
| Bioaccumulation        | Y}               | N               |
| Bioconcentration       | Y} <sup>20</sup> | N               |
| Oct/water Part. Coeff. | Y}               | N               |
| Acute Fish             | N                | N               |
| Acute Daphnia          | N                | N               |
| Subchronic Fish        | N                | N               |
| Subchronic Daphnia     | N                | N               |
| Chronic Fish           | N                | N               |
| AVIAN                  |                  |                 |
| Acute                  | N                | N               |
| Reproductive           | N                | N               |
| Reprodcutive           | N                | N               |

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<sup>15</sup>Guide at pp-23; 33-34.

<sup>16</sup>43 Fed Reg at 11112

"Cancer" listed

<sup>17</sup>Guide at pp-21.

<sup>18</sup>43 Fed Reg at 11112; 11115 at Comment 15

"Mutagenicity" listed/ *in vivo* vs *in vitro* discussed; discussion of "Ames test".

<sup>19</sup>Guide at pp-23.

<sup>20</sup>43 Fed Reg at 11112; 11115 at Comment 16.

**CAS# 1680-21-3**

**Chem: Triethylene glycol diacrylate**

**Title: Human Patch Test**

**Date: 4/21/69**

**Summary of Effects: skin sensitization**

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Copies to: E. P. Mahoney (6)

E. I. du Pont de Nemours and Company  
Haskell Laboratory for Toxicology and Industrial Medicine

HASKELL LABORATORY REPORT NO. 86-69 NR 90. 1035

Material Tested: Cronar® Film Base Cover Sheet from Type 17 Dycril® Plate Haskell No.: 5335

Material Submitted by: E. P. Mahoney, Photo Products Department Other Codes: None  
Manufacturing Division

HUMAN PATCH TEST

Introduction: The polymer layer of the Dycril® plate contains triethylene glycol diacrylate (TDA) which is a known skin irritant and sensitizer. The Cronar® film base cover sheet which is stripped off the plate before it is used is supposedly discarded. However, if it is misused or handled unnecessarily, excessive skin contact could occur. The following test was done to determine whether TDA adheres to or has migrated into the cover sheet in sufficient quantity to cause skin irritation or sensitization response.

Procedure: A 3/4" square patch of cover sheet was applied to the upper arm of an individual strongly sensitized to acrylate monomer. The patch was covered with waterproof cellophane and held in place with adhesive tape for 21 hours then removed. The skin was examined at 21, 24, 48, and 72 hours after the application.

Results: A strong reaction with erythema and edema was seen at 21 hours. Three hours later papules were also evident. and at 48 hours erythema, papules and vesicles extended beyond the actual patch site. The reaction was beginning to subside at 72 hours.

Conclusion: Cronar® film base cover sheet from Type 17 Dycril® plates caused a strong reaction typical of skin sensitization when patch tested on a previously sensitized person. It is concluded that TDA does adhere to or migrate into the cover sheet in amounts sufficient to cause a dermatitis hazard to anyone handling or otherwise coming in contact with the material. Instructions accompanying the Dycril® plates should stress avoidance of skin contact and the necessity for prompt destruction of the used cover sheets.

LAW:chg

Date: April 21, 1969

Report by:

*Lorna A. Wells*  
Lorna A. Wells

Approved by:

*John A. Sapp Jr.*  
John A. Sapp Jr.  
Director

**Triage of 8(e) Submissions**

Date sent to triage: 2/5/96

NON-CAP

CAP

Submission number: 12338 A

TSCA Inventory:

Y

N

D

Study type (circle appropriate):

Group 1 - Dick Clements (1 copy total)

ECO

AQUATO

Group 2 - Ernie Falke (1 copy total)

ATOX

SBTOX

SEN

w/NEUR

Group 3 - Elizabeth Margosches (1 copy each)

STOX

CTOX

ERI

RTOX

GTOX

STOX/ONCO

CTOX/ONCO

IMMUNO

CYTO

NEUR

Other (FATE, EXPO, MET, etc.): \_\_\_\_\_

Notes:

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| Notes:                                  | <u>12/6/95</u>                                |
| Contractor reviewer: <u>[Signature]</u> | Date: <u>[Signature]</u>                      |



CHCATS/RIIAGE TRACKING DEASE ENTRY FORM

PROJECT DATA  
 Submission # 10358 SEQ. A

TYPE: INT. SUPP. F.W.P.

SUBMITTER NAME: Amgen

Amgen

SUB. DATE: 10/19/92 OTR DATE: 10/27/92 CSRAD DATE: 03/30/95

CHEMICAL NAME  
Amgen - 21 - Over Sheet From  
Amgen - 21 - Over Sheet From

CASE  
1060 - 21-3

2. SUPPLEMENTARY ACTIONS
- 0401) NO ACTION (EXPIRED)
  - 0402) STUDIES PLANNED/SCHEDULED MAY
  - 0403) IDENTIFICATION OF WORK/REVISIONS
  - 0404) LAST/OLDEST (TRANS) S
  - 0405) PROGRESS/STATUS (INC. CHANGE)
  - 0406) APPROUSE DISCONTINUED
  - 0407) PRODUCTION DISCONTINUED
  - 0408) CONFIDENTIAL

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| INFORMATION TYPE              | P F C    | INFORMATION TYPE               | P F C    | INFORMATION TYPE       | P F C    |
|-------------------------------|----------|--------------------------------|----------|------------------------|----------|
| 0201 ONCO (HUMAN)             | 01 02 04 | 0216 EPIDEM                    | 01 02 04 | 0241 MURKIN (ANIMAL)   | 01 02 04 |
| 0202 ONCO (ANIMAL)            | 01 02 04 | 0217 HUMAN EXPOS (PEGS CONTAM) | 01 02 04 | 0242 BIRTHING (HUMAN)  | 01 02 04 |
| 0203 CELL TRANS (IN VITRO)    | 01 02 04 | 0218 HUMAN EXPOS (ACCIDENTAL)  | 01 02 04 | 0243 CHEMOPHYS PROP    | 01 02 04 |
| 0204 MUTA (IN VITRO)          | 01 02 04 | 0219 HUMAN EXPOS (MONITORING)  | 01 02 04 | 0244 CLASTO (IN VITRO) | 01 02 04 |
| 0205 MUTA (IN VIVO)           | 01 02 04 | 0220 NORM. FLA TOX             | 01 02 04 | 0245 CLASTO (ANIMAL)   | 01 02 04 |
| 0206 REPRODUCTION (HUMAN)     | 01 02 04 | 0221 ENV. C-DEGRADATE          | 01 02 04 | 0246 CLASTO (HUMAN)    | 01 02 04 |
| 0207 REPRODUCTION (ANIMAL)    | 01 02 04 | 0222 IMBAL. DUE TO ENV CONTAM  | 01 02 04 | 0247 DNA DAMAGE/REPAIR | 01 02 04 |
| 0208 NEURO (HUMAN)            | 01 02 04 | 0223 RESPONSE THRESH. DELAY    | 01 02 04 | 0248 PRODUCE/PROC      | 01 02 04 |
| 0209 NEURO (ANIMAL)           | 01 02 04 | 0224 PRODDT SYSTEM ID          | 01 02 04 | 0249 MSDS              | 01 02 04 |
| 0210 ACUTE TOX (HUMAN)        | 01 02 04 | 0225 REPORTING RATIONALE       | 01 02 01 | 0250 OTHER             | 01 02 04 |
| 0211 ACUTE TOX (HUMAN)        | 01 02 04 | 0226 CONFIDENTIAL              | 01 02 04 |                        |          |
| 0212 ACUTE TOX (ANIMAL)       | 01 02 04 | 0227 ALLERG (HUMAN)            | 01 02 04 |                        |          |
| 0213 SUB ACUTE TOX (ANIMAL)   | 01 02 04 | 0228 ALLERG (ANIMAL)           | 01 02 04 |                        |          |
| 0214 SUB CHRONIC TOX (ANIMAL) | 01 02 04 | 0229 METAB/PHARMACD (ANIMAL)   | 01 02 04 |                        |          |
| 0215 CHRONIC TOX (ANIMAL)     | 01 02 04 | 0230 METAB/PHARMACD (HUMAN)    | 01 02 04 |                        |          |

|              |                   |                  |        |                        |                  |            |
|--------------|-------------------|------------------|--------|------------------------|------------------|------------|
| TRACEABILITY | NON-CBI INVENTORY | REPRODUCTION     | SECRET | TOXICOLOGICAL CRITERIA | USE              | PRODUCTION |
| CAS SR       | YES               | YES (DROP/REFER) | LOW    | LOW                    | photo processing |            |
|              | NO                | NO (CONTINUE)    | MED    | MED                    |                  |            |
|              | IN TITRATION      | REFER            | HIGH   | HIGH                   |                  |            |

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Dermal sensitization in humans is of high concern. A <sup>in vivo</sup> patch test was conducted with individuals strongly sensitized to acrylate monomer. A strong reaction with erythema and edema was seen at 21 hours, and papules were evident at 24 hours. At 48 hours, erythema, papules, and vesicles extended beyond the patch site. The reaction was beginning to subside at 72 hours.