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October 15, 1992

Document Processing Center (TS-790)
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. 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

2/24/95

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 standard². This is particularly troublesome as the "Reporting Guide" states criteria, applied retroactively, which expands upon and conflicts with the Statement of Interpretation.³ 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).

²In 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".

³A 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 intent⁴, 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.⁵;
- 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 .

⁴The '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.

⁵ 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 CRITERIA EXIST?</u>	<u>New 1991 GUIDE CRITERIA EXIST?</u>
ACUTE LETHALITY		
Oral	N}	Y}
Dermal	N}	Y}
Inhalation (Vapors)	} ⁶	} ⁷
aerosol	N}	Y}
dusts/ particles	N}	Y}
SKIN IRRITATION	N	Y ⁸
SKIN SENSITIZATION (ANIMALS)	N	Y ⁹
EYE IRRITATION	N	Y ¹⁰
SUBCHRONIC (ORAL/DERMAL/INHALATION)	N	Y ¹¹
REPRODUCTION STUDY	N	Y ¹²
DEVELOPMENTAL TOX	Y ¹³	Y ¹⁴

⁶43 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."

⁷Guide at pp.22, 29-31.

⁸Guide at pp-34-36.

⁹Guide at pp-34-36.

¹⁰Guide at pp-34-36.

¹¹Guide at pp-22; 36-37.

¹²Guide at pp-22

¹³43 Fed Reg at 11112

"Birth Defects" listed.

¹⁴Guide at pp-22

NEUROTOXICITY	N	Y ¹⁵
CARCINOGENICITY	Y ¹⁶	Y ¹⁷
MUTAGENICITY		
<i>In Vitro</i>	Y ¹⁸	Y ¹⁹
<i>In Vivo</i>	Y}	Y}
ENVIRONMENTAL		
Bioaccumulation	Y}	N
Bioconcentration	Y ²⁰	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

¹⁵Guide at pp-23; 33-34.

¹⁶43 Fed Reg at 11112
"Cancer" listed

¹⁷Guide at pp-21.

¹⁸43 Fed Reg at 11112; 11115 at Comment 15
"Mutagenicity" listed/ *in vivo* vs *invitro* discussed; discussion of "Ames test".

¹⁹Guide at pp-23.

²⁰43 Fed Reg at 11112; 11115 at Comment 16.

CAS# 13252-14-7

**Chem: Nonanoic acid, 3,6-dioxo-2,5-di(trifluoromethyl)-undecafluoro-,
acid fluoride**

Title: Acute Inhalation Toxicity

Date: 12/5/73

Summary of Effects: 4 hour ALC > 10 mgF/L < 25 mgF/L

Copies to: J. Mitchell (6)
W. V. Wright (1)

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

HASKELL LABORATORY REPORT NO. 16-74 MR NO. 1629-001

<u>Material Tested</u>	<u>Haskell No.</u>	<u>Other Codes</u>	<u>Submitted by</u>
Nonanoic acid, 3,6-dioxa-2,5-di(tri-fluoromethyl)-undecafluoro-, acid fluoride	8247	HFPO trimer	W. V. Wright Plastics Department

ACUTE INHALATION TOXICITY

Procedure: A syringe infusion pump metered HFPO trimer into a heated (98-118°C) stainless steel delivery tube with an air dilution port. House-line air carried the vaporized material into a 20-liter exposure chamber containing six young adult Chr-CD male rats. Dilution air was added to the stream just prior to the chamber inlet.

We determined the atmospheric concentration of fluoride by scrubbing samples through 0.1 N NaOH and then analyzing with a specific ion electrode.

Each exposure lasted four hours unless all animals died sooner. There were at least three analyses per exposure. Pathological examinations were performed on three rats at each of 14 and 23 days post-exposure.

<u>Results</u>	<u>Clinical Observations</u>	
	<u>During Exposure</u>	<u>Post-Exposure</u>
Average F ⁻ Concentration (µg/L) (Range)	Mortality Ratio	
25.54 (20.8 - 30.8)	6/6	Severe weight loss continued 5 days; death from 1 hour-5 days (5/6).
9.68 (7.1 - 14.5)	0/6	Moderate daily weight loss continued 14 days resulting in severe body weight loss. This was followed by a mild weight gain.
HFPO trimer equivalent to 9.69 µgF ⁻ /L < ALC [§] < HFPO trimer equivalent to 25.54 µgF ⁻ /L.		
§ Approximate Lethal Concentration.		

* Pathology: Histopathologic examination revealed that despite recovery periods of 14 and 23 days, adverse changes to kidney, liver, testis and bone marrow still persisted. All animals showed severe weight losses which were not restored after 23 post-exposure days. No adverse effects were noted during examination of heart, aorta, adrenal, brain, eye, kidney, trachea, bronchi, thyroid, esophagus, duodenum, cecum, colon and pancreas.

Summary: The four-hour Approximate Lethal Concentration (ALC) of HFPO trimer for young adult Chr-CD male rats is greater than the amount equivalent to 10 $\mu\text{gF}/\text{L}$ but less than the amount equivalent to 25 $\mu\text{gF}/\text{L}$. This is considered extremely toxic based on four-hour inhalation exposure of rats. Contact with this material should be avoided.

* Microscopic examination performed by D. A. Willigan, D.V.M., Ph.D.; Pathology Report 113-73.

Report by: Rhoda M. Brown
Rhoda M. Brown

Approved by: John A. Zapp, Jr.
John A. Zapp, Jr.
Director

NB E3292, p. 1
RMB:pgH
December 5, 1973



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Mark H. Christman
Counsel
E. I. Du Pont De Nemours and Company
Legal D-7010-1
1007 Market Street
Wilmington, Delaware 19898

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

MAY 08 1995

EPA acknowledges the receipt of information submitted by your organization under Section 8(e) of the Toxic Substances Control Act (TSCA). For your reference, copies of the first page(s) of your submission(s) are enclosed and display the TSCA §8(e) Document Control Number (e.g., 8EHQ-00-0000) assigned by EPA to your submission(s). Please cite the assigned 8(e) number when submitting follow-up or supplemental information and refer to the reverse side of this page for "EPA Information Requests".

All TSCA 8(e) submissions are placed in the public files unless confidentiality is claimed according to the procedures outlined in Part X of EPA's TSCA §8(e) policy statement (43 FR 11110, March 16, 1978). Confidential submissions received pursuant to the TSCA §8(e) Compliance Audit Program (CAP) should already contain information supporting confidentiality claims. This information is required and should be submitted if not done so previously. To substantiate claims, submit responses to the questions in the enclosure "Support Information for Confidentiality Claims". This same enclosure is used to support confidentiality claims for non-CAP submissions.

Please address any further correspondence with the Agency related to this TSCA 8(e) submission to:

Document Processing Center (7407)
Attn: TSCA Section 8(e) Coordinator
Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency
Washington, D.C. 20460-0001

EPA looks forward to continued cooperation with your organization in its ongoing efforts to evaluate and manage potential risks posed by chemicals to health and the environment.

Sincerely,

Terry R. O'Bryan
Terry R. O'Bryan
Risk Analysis Branch

Enclosure

12412A



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Triage of 8(e) Submissions

Date sent to triage: 12/14/95

NON-CAP

CAP

Submission number: 12412A

TSCA Inventory:

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Study type (circle appropriate):

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ECO

AQUATO

Group 2 - Ernie Falke (1 copy total)

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SEN

w/NEUR

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Notes:

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Notes:

Contractor reviewer: LPS Date: 4/11/95

CHECATS/TRIAGE TRACKING DBASE ENTRY FORM

CHECATS DATA: Submission # 8EHQ 1092-12412 SEQ. A

TYPE (INT) SUPP FLWP
 SUBMITTER NAME: E. I. DuPont de Nemours and Company

SUB. DATE: 10/15/92 OTS DATE: 10/27/92 CSRAD DATE: 02/24/95

CHEMICAL NAME: Nonanoic acid, 3,6-dioxo-2,5-di(trifluoro-methyl)-undecfluoro-, acid Fluoride

- VOLUNTARY ACTIONS:**
 0401 NO ACTION REPORTED
 0402 STUDIES PLANNED/UNDERWAY
 0403 NOTIFICATION OF WORKING CONDITIONS
 0404 LABEL/MSDS CHANGES
 0405 PROCESS/HANDLING CHANGES
 0406 APP/USE DISCONTINUED
 0407 PRODUCTION DISCONTINUED
 0408 CONFIDENTIAL

INFORMATION REQUESTED: FLWP DATE:
 0501 NO INFO REQUESTED
 0502 INFO REQUESTED (TECH)
 0503 INFO REQUESTED (VOL. ACTIONS)
 0504 INFO REQUESTED (REPORTING RATIONALE)
 DISPOSITION:
 0639 REFER TO CHEMICAL SCREENING
 0678 CAP NOTICE

P.F.C.
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INFORMATION TYPE:
 0241 IMMUNO (ANIMAL)
 0242 IMMUNO (HUMAN)
 0243 CHEM/PHYS PROP
 0244 CLASTO (IN VITRO)
 0245 CLASTO (ANIMAL)
 0246 CLASTO (HUMAN)
 0247 DNA DAM/REPAIR
 0248 PROD/USE/PROC
 0251 MSDS
 0299 OTHER

P.F.C.
 01 02 04
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INFORMATION TYPE:
 0216 EPICLIN
 0217 HUMAN EXPOS (PROD CONTAM)
 0218 HUMAN EXPOS (ACCIDENTAL)
 0219 HUMAN EXPOS (MONITORING)
 0220 ECO/AQUA TOX
 0221 ENV. OCCUR/REL/FATE
 0222 EMER INCI OF ENV CONTAM
 0223 RESPONSE REQUEST DELAY
 0224 PROD/COMP/CHEM ID
 0225 REPORTING RATIONALE
 0226 CONFIDENTIAL
 0227 ALLERG (HUMAN)
 0228 ALLERG (ANIMAL)
 0229 METAB/PHARMACO (ANIMAL)
 0240 METAB/PHARMACO (HUMAN)

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INFORMATION TYPE:
 0201 ONCO (HUMAN)
 0202 ONCO (ANIMAL)
 0203 CELL TRANS (IN VITRO)
 0204 MUTA (IN VITRO)
 0205 MUTA (IN VIVO)
 0206 REPRO/TERATO (HUMAN)
 0207 REPRO/TERATO (ANIMAL)
 0208 NEURO (HUMAN)
 0209 NEURO (ANIMAL)
 0210 ACUTE TOX. (HUMAN)
 0211 CHR. TOX. (HUMAN)
 0212 ACUTE TOX. (ANIMAL)
 0213 SUB ACUTE TOX (ANIMAL)
 0214 SUB CHRONIC TOX (ANIMAL)
 0215 CHRONIC TOX (ANIMAL)

USE:
 PRODUCTION:

TOXICOLOGICAL CONCERN:

SPECIES: RAT

ONGOING REVIEW
 YES (DROP/REFER)
 NO (CONTINUE)
 REFER

NON-CBI INVENTORY
 YES
 NO

CAS SR
 YES
 NO
IN PENDING

LOW
 MED
 HIGH

UNCLASSIFIED

12412A

H

Acute inhalation toxicity in the rat is of high concern. Male ChR-CD rats (6/concentration) were exposed to concentrations of 9.68 or 25.54 mg/m³ (9.68 and 25.54 µg/L as fluorine) for four hours. Deaths were 0/6 and 6/6, respectively. Clinical signs at the low concentration included pawing, grooming, hyperemia, and labored respiration, and at the high concentration, labored respiration, pallor, red nasal discharge, and severe weight loss. Histopathologic changes were exhibited in the kidney, liver, testis, and bone marrow.