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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)

8EHR - 92 - 12382
INIT
88920010591

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

mm
2/13/95

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 criteri. 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*.

TEST TYPE	1978 POLICY CRITERIA EXIST?	New 1991 GUIDE CRITERIA EXIST?
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
Reproductive	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 *in vitro* discussed; discussion of "Ames test".

¹⁹Guide at pp-23.

²⁰43 Fed Reg at 11112; 11115 at Comment 16.

CAS# 9002-84-0

Chem: "Teflon" 7; "Teflon" 6 with C₈-APFC dispersing agent;

**"Teflon" 6C with C₉-AFC dispersing agent; "Teflon" 6C with
AHT dispersing agent**

Title: Subacute Feeding Study

Date: 11/20/61

Summary of Effects: Slightly enlarged livers when fed to rats

E. I. du Pont de Nemours and Co.
 Haskell Laboratory for Toxicology and Industrial Medicine
 HASKELL LABORATORY REPORT NO. 56-61 NR NO. 604

cc: G. J. Arenson (10)
T. High - Parker #32

Materials Tested: "Teflon" 7; "Teflon" 6 with C₈-APFC dispersing agent;
 "Teflon" 6C with C₉-APFC dispersing agent; "Teflon" 6C
 with AHT dispersing agent
 Raskell Nos.: 3037; 3038; 3039; 3040

Submitted by: G. J. Arenson, Polychemicals Department
 Research and Development Division
 Other Codes: Lot 90012; Lot 31085;
 Lot 55674; TE 3166,
 Batch 71-2091

Subacute Feeding Study

Procedure: The subject compounds have each been added at a 25% concentration to an adequate nutritional diet and fed to four groups of 6 young adult CH-CD male rats; another group of animals serving as a control, was fed the same complete diet to which 25% powdered cellulose had been added. Two animals from each group were sacrificed after 2 and 3 weeks on their respective diets. All remaining animals were offered the complete nutritional diet for an additional 2 weeks.

Group	Initial	Average Body Weight (g)					Individual Liver Weights (g)					Liver Weight X 100 Body Weight Ratio	
		2 Weeks	3 Weeks	5 Weeks	2 Weeks	3 Weeks	5 Weeks	2 Weeks	3 Weeks	5 Weeks	2 Weeks	5 Weeks	
Control	227	336	352	391	{16.39 {16.30	14.50 13.78	13.40 13.45	4.5 4.8	4.2 3.8	3.5 3.4			
"Teflon" 7	226	324	359	422	{13.36 {14.83	12.26 14.78	14.50 15.02	4.1 4.6	3.7 3.9	3.6 3.4			
"Teflon" 6 with C ₈ -APFC	226	326	368	453	{13.43 {15.66	14.64 14.72	21.17 20.53	4.1 4.7	4.1 4.0	4.8 4.4			
"Teflon" 6C with C ₉ -APFC	226	319	352	422	{15.87 {15.43	12.08 14.96	16.29 17.98	4.6 4.8	3.7 4.3	3.8 4.4			
"Teflon" 6C with AHT	226	327	364	418	{17.65 {16.67	18.50 18.50	17.43 20.11	5.1 5.3	5.2 4.8	4.2 4.8			

Comments:

The addition of "Teflon", made with or without dispersing agents, to the diet of rats at a concentration of 25% had no adverse effect upon the weight gains of the animals over a three-week test period and a two-week recovery period.

After two and three weeks of continuous feeding, the animals that received 25% "Teflon" 6C made with AHT as the dispersing agent had slightly heavier livers than the other test or control animals. After a two-week recovery period, the animals that had received 25% "Teflon" made with Cg-APFC, Cg-AFC, or AHT as the dispersing agent had slightly heavier livers than those from the control animals or the animals that received "Teflon" made without any dispersing agent.

"Teflon" 6C, made with AHT, contains less than 5 ppm of residual dispersing agent. Animals ingesting this "Teflon" received a daily dose of < 0.14 mg AHT per kilogram of body weight during the test period. Previous work has indicated that a single dose of 0.13 mg AHT/kg of body weight produced a slightly enlarged liver in a rat 14 days after dosing.

On the basis of the present experiment, it appears that the three "Teflon" products that were made with AHT, Cg-APFC, or Cg-AFC as dispersing agents can produce slightly enlarged livers when fed to rats. "Teflon" 6C made with AHT seems to be more active in this respect since it caused this liver enlargement to appear earlier. However, no data are available on the residual amounts of AHT, Cg-APFC or Cg-AFC in the "Teflon" samples.

It has previously been reported (Mastall Laboratory Report No. 49-60) that the feeding of an unsintered "Teflon" 6 powder to rats at a dietary concentration of 25% produced liver enlargement after 90 days, but not after 14 and 21 days. It is difficult to compare the results of the present study with those of the previous study, for no data are available with respect to the amount of residual dispersing agent in the respective samples.

Additional feeding studies with "Teflon" containing known quantities of residual dispersing agents are recommended.

Report by: Henry Sherman

Approved by: D. B. Howard

Date: November 20, 1961

BS:bhh

Triage of 8(e) Submissions

Date sent to triage: 2/5/96

NON-CAP

CAP

Submission number: 12382A

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 EPI RTOX GTOX
STOX/ONCO CTOX/ONCO IMMUNO CYTO NEUR

Other (FATE, EXPO, MET, etc.): _____

Notes:

THIS IS THE ORIGINAL 8(e) SUBMISSION; PLEASE REFILE AFTER TRIAGE DATABASE ENTRY

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entire document: <u>0</u> 1 2 pages <u>1, 1st tab</u>	pages <u>1, all tabs</u>
Notes:	
Contractor reviewer: <u>LPS</u>	Date: <u>5/11/95</u>

CECATS TRIAGE TRACKING DBASE ENTRY FORM

CECATS DATA: Submission # 8EHQ 1092-12382 SEQ. # A
 TYPE: INT/SUPP FLWP
 SUBMITTER NAME: E. I. DuPont de Nemours and Company

INFORMATION REQUESTED: FLWP DATE
 0501 NO INFO REQUESTED
 0502 INFO REQUESTED (TECH)
 0503 INFO REQUESTED (VOL ACTIONS)
 0504 INFO REQUESTED (REPORTING RATIONALE)
 DISPOSITION:
 0570 REFER TO CHEMICAL SCREENING
 0576 CAP NOTICE

SUB. DATE: 10/15/92 OTS DATE: 10/27/92 CSRAD DATE: 02/13/95

CHEMICAL NAME: "Teflon" 7
"Teflon" 6 with C8 - APFC dispersing agent
"Teflon" 6C with C9 - AFC dispersing agent
"Teflon" 6C with AHT dispersing agent
 INFORMATION TYPE: P.F.C.

✓ Ethene, tetrafluoro-
 homopolymer in Teflon

- VOLUNTARY ACTIONS:**
 0401 NO ACTION REPORTED
 0402 STUDIES PLANNED/IN PROGRESS
 0403 NOTIFICATION OF WORKING CONDITIONS
 0404 LABELING/MSDS (TIANJIN)
 0405 PROCESS/PLANTING CHANGES
 0406 APPAUSE DISCONTINUED
 0407 PRODUCTION DISCONTINUED
 0408 CONFIDENTIAL

INFORMATION TYPE:	0201	0202	0203	0204	0205	0206	0207	0208	0209	0210	0211	0212	0213	0214	0215	0216	0217	0218	0219	0220	0221	0222	0223	0224	0225	0226	0227	0228	0229	0240	0241	0242	0243	0244	0245	0246	0247	0248	0251	0299		
ONCO (HUMAN)	ONCO (ANIMAL)	CELL. TRANS (IN VITRO)	MUTA (IN VITRO)	MUTA (IN VIVO)	REPRO/TERATO (HUMAN)	REPRO/TERATO (ANIMAL)	NEURO (HUMAN)	NEURO (ANIMAL)	ACUTE TOX. (HUMAN)	CHR. TOX. (HUMAN)	ACUTE TOX. (ANIMAL)	SUB ACUTE TOX (ANIMAL)	SUB CHRONIC TOX (ANIMAL)	CHRONIC TOX (ANIMAL)	EPICLIN	HUMAN EXPOS (PROD CONTAM)	HUMAN EXPOS (ACCIDENTAL)	HUMAN EXPOS (MONITORING)	ECO/AQUA TOX	ENV. OCCURRENCE/FATE	EMER INCI OF ENV CONTAM	RESPONSE REQUEST DELAY	PRODCOMP/CHEM ID	REPORTING RATIONALE	CONFIDENTIAL	ALLERG (HUMAN)	ALLERG (ANIMAL)	METAB/PHARMACO (ANIMAL)	METAB/PHARMACO (HUMAN)	IMMUNO (ANIMAL)	IMMUNO (HUMAN)	CHEMPHYS PROP	CLASTO (IN VITRO)	CLASTO (ANIMAL)	CLASTO (HUMAN)	DNA DAM/REPAIR	PROD/USE/PROC	MSDS	OTHER			
01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04	01 02 04

PRODUCTION:

USE:
TOXICOLOGICAL CONCERN:
LOW Subacute Dietary Toxicity
 MED
 HIGH

SPECIES

RAT

ONGOING REVIEW

YES (DROP/PREFER)
 NO (CONTINUE)

TRIAGE DATA

NON-CBI INVENTORY
YES
 CAS SR NO
 IN T R M I M I

#12382A

L

Subacute dietary toxicity is of low concern based on no mortality in rats exposed to 5 Teflon compounds in their diet for 3 weeks at a 25% concentration (equivalent to 150 mg/kg/day). Insignificant increased liver weight was the only effect reported.