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DuPont faces fine over C-8 reporting

EPA cites failure to disclose chemical contamination of drinking water

By JENNIFER GOLDBLATT, Staff reporter

The DuPont Co. violated federal law by not reporting that a chemical used to make Teflon had contaminated drinking water supplies in West Virginia and that it had been transferred to the unborn fetus of at least one female employee, federal regulators said Thursday.

DuPont officials denied any wrongdoing and said the company would appeal the decision within 30 days.

The Environmental Protection Agency said DuPont violated the Toxic Substances Control Act, which required it to report information that reasonably supports the conclusion that a substance presents substantial risk of injury to the environment or human health. The EPA also said DuPont violated the Resource Conservation and Recovery Act, which establishes guidelines for managing wastes and requires the company to keep the agency informed.

Tom Skinner, head of EPA's Office of Enforcement and Compliance Assurance, stressed that Thursday's action made no determination about potential health risks from C-8.

"It is a matter regarding the reporting duty that DuPont had," he said.

The size of the fine had not yet been determined, but would be "in the millions," Skinner said. He said the agency probably would not impose the maximum possible fine for the violations, which could approach \$300 million.

"Today's action is intended to send a message to DuPont and everyone else that this type of information must be provided to the agency," Skinner said.

C-8, also known by its chemical initials, PFOA, is used to make a range of consumer products, including Teflon, carpet stain protectors, fast-food packaging, paper products, cleaning compounds and clothing.

The EPA is conducting a separate investigation to determine how C-8 enters the environment and whether it is harmful.

The 3M Co., the original manufacturer of C-8, began phasing out the chemical in 2000, citing environmental concerns. DuPont continued to use C-8 and now manufactures it.

3M gave the EPA a series of studies showing that C-8 causes birth defects and cancer in rats. The studies also showed that C-8 was detected in the blood of 98 percent of 598 children tested in 23 states and the District of Columbia. The EPA cited those studies as part of the reason it decided to study the chemical further.

C-8 also contaminated the drinking water supply of 30,000 people near a DuPont Teflon plant in the Ohio River valley, which became the basis for a class-action lawsuit. DuPont officials have denied wrongdoing in connection with that lawsuit.

DuPont, in 1981, observed C-8 in blood samples taken from pregnant workers at the Washington Works facility in West Virginia, including at least one woman who had transferred the chemical to her fetus, according to company documents in the class-action suit.

The EPA alleges that DuPont had not given the agency all toxicological information regarding C-8, even though the EPA had requested this information under the terms of the permit it had issued the company.

By 1991, DuPont had information that C-8 was in the water supplies, according to company documents. But the EPA said DuPont did not inform federal regulators.

DuPont asserts that there is no legal basis for the EPA's allegations. The company contends that it has fully complied with statutory reporting requirements and disputes any association between C-8 and harmful effects on human health or the environment.

"DuPont has provided substantial information to EPA supporting our conclusion that we have followed the law," said DuPont General Counsel Stacey J. Mobley. "We will take action to respond to the agency's complaint and will vigorously defend our position."

DuPont can appeal the agency's decisions in court-like administrative hearings with the EPA, Skinner said. If it is not satisfied with the result, the company can appeal to the U.S. Court of Appeals, he said.

Robert Bilott, the attorney representing the plaintiffs in a class action lawsuit against DuPont, would not comment on the EPA's ruling or any potential impact on his case. It is set for trial Sept. 20 in Wood County, W. Va., Circuit Court.

The Consumer Products Safety Commission also is monitoring the EPA's safety study to determine whether warning labels should be required on Teflon-coated pans. The Food and Drug Administration, which regulates substances that have contact with food, also is following the hearings. The U.S. Centers for Disease Control and Prevention has added C-8 to the list of chemicals for which it routinely screens blood.

Officials from the Environmental Working Group, which told the EPA in April 2003 it believed DuPont had violated the Toxic Substances Control Act, said they were concerned that the EPA had not mentioned specific fines.

"We're just not at all sure where all of this is going to come out," said Richard Wiles, a senior vice president with the Washington D.C.-based, non-profit environmental advocacy group. "We're very concerned that they want to have it both ways, announce a big action and then do nothing."

Reach Jennifer Goldblatt at 324-2877 or jgoldblatt@delawareonline.com.