



## THE WEINBERG GROUP INC.

April 29, 2003

Jane Brooks  
 Vice President, Special Initiatives  
 DuPont de Nemours & Company  
 Chestnut Run 708  
 4417 Lancaster Pike  
 Wilmington, DE 19805

Re: Perfluorooctanoic acid (PFOA)

Dear Ms. Brooks:

I am preparing this letter in anticipation of our meeting on April 29, 2003 in Washington, DC. This piece is intended to describe the services THE WEINBERG GROUP INC. can provide regarding issues related to perfluorochemicals generally and perfluorooctanoic acid (PFOA) in particular. Please note that this has been prepared prior to our initial meeting. I will most certainly follow up after our meeting with more specific ideas and recommendations after we have had the opportunity to discuss DuPont's concerns in greater detail.

The constant theme which permeates our recommendations on the issues faced by DuPont is that **DUPONT MUST SHAPE THE DEBATE AT ALL LEVELS**. We must implement a strategy at the outset which discourages governmental agencies, the plaintiff's bar, and misguided environmental groups from pursuing this matter any further than the current risk assessment contemplated by the Environmental Protection Agency (EPA) and the matter pending in West Virginia. We strive to end this now.

For 23 years, THE WEINBERG GROUP has helped numerous companies manage issues allegedly related to environmental exposures. Beginning with Agent Orange in 1983, we have successfully guided clients through myriad regulatory, litigation, and public relations challenges posed by those whose agenda is to grossly over regulate, extract settlements from, or otherwise damage the chemical manufacturing industry.

As we understand the situation, there is currently a great deal of attention focused on the safety of perfluorochemicals generally and PFOA in particular. Specifically, due to the situation in West Virginia and the activities of Environmental Working Group, the threat of expanded

1220 Nineteenth St. NW, Suite 300  
 Washington, DC 20036-2400  
 Phone 202.833.8077  
 Fax 202.833.7057  
 Email science@weinberggroup.com

WASHINGTON  
 NEW YORK  
 SAN FRANCISCO  
 BOSTON  
 PARIS

63

Jane Brooks  
April 29, 2003  
Page 2

litigation and additional regulation by the EPA has become acute. In response to this threat, it is necessary for DuPont to prepare an overall technical and scientific defense strategy. We can assist with all phases of the technical and scientific defense, but more importantly, shape the debate and direction of the PFOA issue. The recent ruling by Judge Hill regarding blood testing underscores the need to act quickly and forcefully. The following will describe some of our capabilities in assessing the scientific facts, developing appropriate responses or sound scientific messages, building a team of world class experts to deliver those messages, and implementing a strategy to limit the effect of litigation and regulation on the revenue stream generated by PFOA.

#### **DEVELOPMENT OF BROAD TECHNICAL DEFENSE STRATEGY**

For over two decades, clients have repeatedly communicated to us that of all the services we provide, the most valued is our ability to provide an overall science-based defense strategy. This strategy can be applied to litigation, regulatory, or legislative problems that cause a particular product to be under pressure. Specifically, during the initial phase of our engagement by a client, we will harness, focus, and involve the scientific and intellectual capital of our company with one goal in mind—creating the outcome our client desires. This will entail the coordinated and focused compilation of specialists within THE WEINBERG GROUP to receive, review, and analyze all available relevant data regarding PFOA in particular, and polyfluorochemicals in general. These in-house experts are scientists and physicians holding advanced degrees in such areas as epidemiology & biostatistics, pharmacology, pathology, toxicology, oncology, molecular biology, regulatory strategy, and product defense.

The outcome of this process will result in the preparation of a multifaceted plan to take control of the ongoing risk assessment by the EPA, looming regulatory challenges, likely litigation, and almost certain medical monitoring hurdles. The primary focus of this endeavor is to strive to create the climate and conditions that will obviate, or at the very least, minimize ongoing litigation and contemplated regulation relating to PFOA. This would include facilitating the publication of papers and articles dispelling the alleged nexus between PFOA and teratogenicity as well as other claimed harm. We would also lay the foundation for creating Daubert precedent to discourage additional lawsuits. THE WEINBERG GROUP would also prepare an all-encompassing strategy to meet public relations issues and, if necessary, prepare company representatives for testifying before governmental bodies. These are but a few of the services we provide.

It is also important to note that these services will not be duplicative of the services provided by law firms and public relations firms. Although we work closely with counsel and other consultants, our services are distinct and science-based.

69  


Jane Brooks  
April 29, 2003  
Page 3

Over the past thirty years, the perfluorochemical industry has amassed a plethora of scientific data on the safety of PFOA. Many in the industry are convinced, with good reason, that PFOA is safe. They would cite numerous studies and conclusions reached by a broad spectrum of scientists. All of this is good, and certainly well intended, but the current litigation and regulatory climate demands a fresh new approach. In our opinion, it matters little that the industry is satisfied PFOA is safe. The real issue is the perception *outside* the industry. This battle must be won in the minds of the regulators, judges, potential jurors, and the plaintiff's bar. The recent certification by numerous federal courts of medical monitoring classes as well as the organization, sophistication, and financial strength of the plaintiff's bar require an aggressive, relentless strategy be implemented and driven by the manufacturers. Manufacturers must be the aggressors. A defensive posture, in our opinion, would be disastrous. THE WEINBERG GROUP can help DuPont take the lead on issues related to PFOA. We would suggest a multifaceted approach be implemented immediately.

#### WHAT WE DO

As the leading scientific consulting firm in the world, THE WEINBERG GROUP serves industries in four areas, the first of which is development, registration and support of pharmaceuticals, biologics, and devices. Other services deal with environmental, health and safety issues through the use of the latest information and techniques establishing risk levels and risk management techniques and organization of technical functions such as quality assurance and toxicological, clinical and epidemiological studies. In the fourth area, we provide science-based advocacy to help deal with emerging business problems in litigation, legislation and regulation. Our staff has a broad base of experience supporting counsel and their clients in responding to demands for damages, punitive rewards, reimbursement and future medical monitoring costs for personal injury and fraud associated with drugs, corporate conduct, and failure to provide the correct information to the public or legislators and regulators. Specifically, in the area of Science-Based Advocacy, we assist with:

- analysis of plaintiffs' best case and defendants' best response as a tool for strategy and tactical development;
- expert witness, spokesperson and panel identification and development in all issues in litigation;
- preparation of counsel for discovery, deposition, negotiation, and trial;
- records review, analysis, and organization;
- preparation of primers describing critical issues and including approaches such as affidavits for use in summary judgment and opposition to class certification;
- document retrieval, management and analysis;
- unique development of experts with chemical, medical, epidemiological, biologics, regulatory, and legislative backgrounds;
- a variety of public relations programs needed to create jury understanding of the issues; and



Jane Brooks  
 April 29, 2003  
 Page 4

- Creation of exhibits, audiovisual presentations, and other devices to enhance lay understanding of the issues in dispute, most notably the complex scientific concepts to be digested in defense arguments.

Ours is a task-oriented organization in which clients make specific assignments under carefully planned, client-controlled budgets. Our experience in environmental exposure matters has repeatedly illustrated our client's need to control as many variables of liability exposure as possible. In addition, some preliminary suggestions of tasks for managing issue related to PFOA include:

- develop "blue ribbon panels" of thought leaders on issues related to PFOA **IN REGIONS WHERE MANUFACTURING PLANTS ARE LOCATED** to create awareness of safety regarding PFOA in areas of likely litigation, and in particular where medical monitoring claims may be brought;
- develop an aggressive campaign focused on the safety and utility of PFOA and the products it in which it is used;
- coordinate the retrieval, organization, and analysis of literature to date (both internal and external) regarding safety of PFOA and create a centralized searchable database for industry use;
- begin to identify and retain leading scientists to consult on the range of issues involving PFOA so as to develop a premium expert panel and concurrently conflict out experts from consulting with plaintiffs;
- begin to coordinate focus groups of mock jurors to determine the best "themes" for defense verdicts and perspectives on management of company documents and company conduct;
- reshape the debate by identifying the likely known health benefits of PFOA exposure by analyzing existing data, and/or constructing a study to establish not only that PFOA is safe over a range of serum concentration levels, but that it offers real health benefits (oxygen carrying capacity and prevention of CAD);
- coordinate the publishing of white papers on PFOA, junk science and the limits of medical monitoring;
- work with industry lobbyists to ensure they remain on message regarding the scientific issues related to PFOA;
- provide the strategy to illustrate how epidemiological association has little or nothing to do with individual causation, and;
- begin to shape the Daubert standards in ways most beneficial to manufactures.

THE WEINBERG GROUP has developed an understanding of the variety of approaches needed to deal with each of these issues. Indeed, we have trial experience in these issues as well.

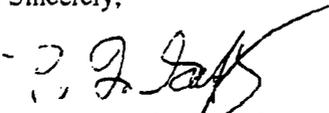


Jane Brooks  
April 29, 2003  
Page 5

I want to reiterate that we already have extensive experience in helping a Fortune 40 client with a very similar compound to PFOA. Our experience and knowledge regarding this compound is very well established. We do not need to educate ourselves at DuPont's expense.

I again stress that this was prepared prior to our initial meeting, but I wanted to provide material for you to ruminate upon before our next discussion on these issues. Thank you again for the opportunity to be of service.

Sincerely,



P. Terrence Gaffney, Esq.  
Vice President  
Product Defense  
THE WEINBERG GROUP INC.

PTG/hp

