

-----Messaggio originale-----

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Inviato: lunedì 14 giugno 2004 14.21
A: zlm@[REDACTED]
Cc: fabio.esposito@[REDACTED]; carlo.gloria@[REDACTED]
Oggetto: PFOA

Mr. Zambeli,

Thank you for your legal advice in reply to our inquiry on DUPONT U.S.A. request of PFOA issue. Eventually DUPONT has withdrawn their request after official answer from MITSUBISHI CORPORATION.

While, as I explained to you over phone today, DUPONT informed MITSUBISHI that there is only one request EPA will make for information as per attached file of Federal Register Notice April 2003.

They understand no one is bound by the notice to provide information but at the same time, no one is going to receive any special requests to provide information, either. The exception is TSCA 8e, which requires companies to report if they are aware of any information about health hazards associated with a material.

As MITENI, I myself and MITSUBISHI would like you to check the said F.R.N. and advise if there is any obligation for MITENI to report, notify or take any other actions right away.

I look forward to receiving your comment soonest.

Kind Regards,

MITENI S.P.A. Kimura

(See attached file: EPA41603FedRegNotice.pdf)



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16/06/2004 13.08

Per: <naoyuki.kimura@[REDACTED]>
Cc: <fabio.esposito@[REDACTED]>, <carlo.gloria@[REDACTED]>
Oggetto: R: PFOA

Dear. Mr. Kimura,

thank you for your e-mail of 14th June.

I agree with you that no one is bound, by the Federal Register Notice April 16, 2003, to provide information.

As a matter of fact, this notice of EPA (Environmental Protection Agency) just informs the interested people that EPA has identified potential human health concerns from exposure to perfluorooctanoic acid (PFOA) and its salts. In the Notice, a number of details is given about the potential risks of the product, and the preparation, by EPA, of a "preliminary risk assessment" is stated. EPA is insisting, again in the Notice, about the fact that the "uncertainties" still remaining about the risks of the product may be reduced through acquisition of the information described in the Notice. EPA mentions also the fact that 3M indicated that PFOA may have been present as a trace contaminant in some of the fluorochemical products which it discontinued manufacturing between 2000 and 2002. Summarizing, in the Notice, EPA asks the industry to respond to the Agency's concerns regarding PFOA.

Therefore, in the Notice, EPA just requires the cooperation of the industry and of the interested persons to reach a better and more complete understanding of the potential risks of PFOA. In this framework, no obligation arises, from the Notice, for Mitsubishi and/or for Miteni.

Nevertheless, - as you correctly stated in your e-mail of June, 14, - the position of your Companies with reference to the Toxic Substances Control Act (TSCA) must be duly examined.

It is worthwhile recalling that TSCA was enacted, by Congress, to give EPA the ability to carefully examine the industrial chemicals currently produced or imported into the United States.

Now, Section 8(e) of the TSCA states that "any person who manufactures [including imports], processes, or distributes in commerce a chemical substance or mixture, and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the [EPA] Administrator of such information, unless such person has actual knowledge that the Administrator has been adequately informed of such information".

The term "substantial risk" information refers to that information which reasonably supports a conclusion that the subject chemical or mixture presents a substantial risk of injury to health or the environment.

For the purpose of the above Section 8(e), the term "person" includes the following: any natural person, corporation, firm, company, sole-proprietorship, joint-venture, partnership, association, or any other business entity, any State or political subdivision of a state, any municipality, any interstate body, and any department or agency of the Federal Government.

Such "persons" are subject to TSCA Section 8(e) only to the extent they are engaged in commercial activities involving manufacture, importation or distribution of chemical substances under the jurisdiction of TSCA, and therefore covered by section 8(e) of TSCA.

It is important to note that those employees and officers who are responsible for actual management of the persons, specified in Section 8(e), retain personal civil and/or criminal liability for ensuring that substantial risk information is submitted to the Agency. If no appropriate organisation as per above, all employees and officers retain their individual responsibilities and liabilities for ensuring that substantial risk information is reported to EPA.

Submitters may claim confidentiality for proprietary information within a TSCA 8(e) submission, but must also submit a detailed written explanation to justify all confidential business information claims.

Of course, the above rules may be enforced to the subjects operating in the U.S., importing products into the U.S., etc...

The above having been stated, I call your attention on the fact that, according to the Section 8(e) of the TSCA, any person having obtained the information specified therein is not held to inform [EPA] Administrator, if such person has actual knowledge that the Administrator has been adequately informed of the risks involved in the product taken into consideration.

Now, precisely the already mentioned Federal Register Notice April 16, 2003, delivered also to your Group, shows that EPA is already aware about a number of risks concerning PFOA.

Therefore, in my opinion, pursuant to the Section 8(e) of the TSCA, Mitsubishi would be held to inform EPA only of the risks, if any, which are not stated in the Notice, and which, possibly, Mitsubishi is aware of, or becomes aware of.

If Mitsubishi does not know any risk involved in the PFOA which is not stated or explained in the Notice, your company has no obligation, at present, to take any initiative on the matter.

Of course, the above is stated in the assumption that the Notice is the only document available to you and concerning the knowledge of the risks of PFOA by EPA.

In spite of the above, in case EPA asks Mitsubishi for a specific information concerning PFOA, or in case EPA asks Mitsubishi for a general description of the potential risks of PFOA, the company shall be held to provide EPA with the information requested. This obligation can be inferred from a general examination of the Act.

Please, consider that, independently from the above, if PFOA is found to be a hazardous product, in no case the Manufacturer, the Importer and/or the Distributor shall be exempted from the product liability connected therewith. On the matter, please see my letter to Ing. Fabio Esposito dated July, 4, 2003.

I am available for any further help.

Kindest regards,

Avv. Paolo M. Zambelli

