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ONE HUNDRED TENTH CONGRESS

**U.S. House of Representatives**  
**Committee on Energy and Commerce**  
**Washington, DC 20515-6115**

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February 5, 2008

DENNIS B. FITZGIBBONS, CHIEF OF STAFF  
GREGG A. ROTHSCCHILD, CHIEF COUNSEL

Mr. Matthew R. Weinberg  
Chief Executive Officer  
The Weinberg Group  
1220 Nineteenth St., N.W., Suite 300  
Washington, D.C. 20036

Dear Mr. Weinberg:

Under Rules X and XI of the Rules of the U.S. House of Representatives, the Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations are investigating the use of the chemical Bisphenol A (BPA), particularly in products intended for use by infants and children.

Our investigation has revealed that your organization has been involved in the scientific debate related to perfluorooctanoic acid (PFOA), Agent Orange, and now BPA. A letter published in *Environmental Health Perspectives* by Joseph A. Politch with the Department of Obstetrics and Gynecology at Boston University School of Medicine indicates that he is also a consultant for the Weinberg Group.<sup>1</sup> We are interested in the activities of the Weinberg Group as related to the scientific debate around certain chemicals, including, but not limited to, BPA.

In an April 29, 2003, letter from the Weinberg Group to DuPont de Nemours & Company, it stated that the Weinberg Group will "harness, focus, and involve the scientific and intellectual capital of our company with one goal in mind – creating the outcome our client desires." It is not clear whether such outcomes will be congruent with the available scientific evidence. The letter indicates that such outcomes will be accomplished by:

1. "[F]acilitating the publication of papers and articles dispelling the alleged nexus between PFOA and teratogenicity as well as other claimed harm.";

<sup>1</sup> Politch JA., Bisphenol A and Risk Assessment. *Environmental Health Perspectives*. 2006 Jan; 114(1):A16.

2. Assisting with “expert witness, spokesperson and panel identification and development in all issues in litigation”;
3. Assisting with “unique development of experts with chemical, medical, epidemiological, biologics, regulatory, and legislative backgrounds”;
4. Assisting with “a variety of public relations programs needed to create jury understanding of the issues”;
5. Developing “‘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 claim may be brought”;
6. Beginning “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”;
7. Reshaping “the debate 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...”;
8. Coordinating “the publishing of white papers on PFOA, junk science and the limits of medical monitoring”; and
9. Beginning “to shape the Daubert standards in ways most beneficial to manufactures.”

Given these varied tactics proposed for PFOA, we are interested in how the Weinberg Group may have utilized such tactics for chemicals such as BPA. Therefore, we ask that the Weinberg Group provide to the Committee the following:

1. All publications, papers, studies, white papers, and articles authored and/or published by the Weinberg Group or its expert witnesses, spokespersons, experts, consultants, and panels;
2. Names and professional qualifications of any and all expert witnesses, spokespersons, experts, consultants, and panels identified or developed by the Weinberg Group;
3. All records related to any and all expert witnesses, spokespersons, experts, consultants, and panels identified or developed by the Weinberg Group, including

any e-mails, memoranda, and correspondence as well as contractual arrangements related to their work for the Weinberg Group;

4. All financial records relating to any and all expert witnesses, spokespersons, experts, consultants, and panels identified or developed by the Weinberg Group, including how much money they have ever received from the Weinberg Group, its subsidiaries, contractors, or subcontractors;
5. All records relating to public relations programs developed, initiated, or carried out by the Weinberg Group; and
6. All records, including any e-mails, memoranda, and correspondence, relating to Daubert standards or jury influence.

In addition, we ask that you do not destroy, dispose of, or tamper with any records relating to this request, or that may subsequently be found to relate to this request, until the conclusion of this inquiry and that you notify all contractors involved with your company of this preservation request.

Please deliver copies of the requested records to the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, Room 316, Ford House Office Building, no later than two weeks from the date of this letter. Please note that for the purpose of responding to this request, the terms "record" and "relating" should be interpreted in accordance with the attachment to this letter. After review of the records, we may require additional records and/or staff interviews with company staff.

Thank you for your prompt attention to this matter. If you have any questions related to this request, please contact John F. Sopko or Paul Jung of the Committee staff at (202) 226-2424.

Sincerely,



John D. Dingell  
Chairman



Bart Stupak  
Chairman  
Subcommittee on Oversight and Investigations

Attachment

Mr. Matthew R. Weinberg  
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cc: The Honorable Joe Barton, Ranking Member  
Committee on Energy and Commerce

The Honorable John Shimkus, Ranking Member  
Subcommittee on Oversight and Investigations

## ATTACHMENT

1. The term "records" is to be construed in the broadest sense and shall mean any written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts and both sides thereof, whether printed or recorded electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements, drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intra-office and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.
2. The terms "relating," or "relate" as to any given subject means anything that constitutes, contains, embodies, identifies, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.

AR226-1693



THE WEINBERG GROUP INC.

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WASHINGTON  
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SAN FRANCISCO  
BIRMINGHAM  
PARIS

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

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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.

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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



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- 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.



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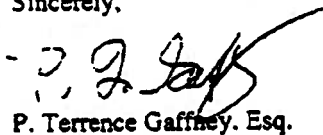
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I want to reiterate that we already have extensive experience in helping a Fortune 40 client with a very similar compound to PFOA. Our experience and knowledge regarding this compound is very well established. We do not need to educate ourselves at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

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