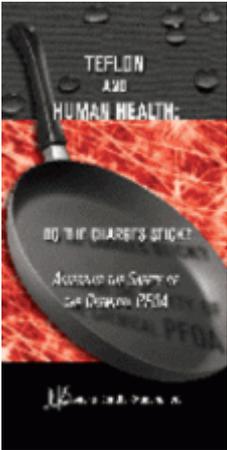


Revisiting Chemical Dumping to Call Again for TSCA 'Reform'

By Gil Ross — January 12, 2016



Recently the *New York Times* magazine published a lengthy article

spotlighting the intrepid efforts of a West Virginia litigator, Rob Bilott, to expose the ostensibly nefarious practices of the DuPont company regarding its chemical, PFOA.

The [piece is entitled](#) ^[1] "The Lawyer Who Became DuPont's Worst Nightmare." It profiled the 12-plus year efforts of Mr. Bilott to find evidence that DuPont knew about PFOA's toxicity and, despite that knowledge, continued to dump it into the waters of the Ohio River. Further, that the company hid, or at least failed to disclose, this knowledge to official government regulators. That river supplies drinking water to a population of about 100,000 West Virginians and Ohioans.

My thoughts on reading the long *exposé* was that DuPont acted shamefully and illegally in their blasé toxic dumping of PFOA, or perfluorooctanoic acid, which is an important part of the production of non-stick substances, including Teflon. But when I read it again I perceived that, while the company's tactics were clearly reckless and aimed at hiking its bottom line, since PFOA was not under the regulatory rubric of the EPA under the Toxic Substances Control Act (TSCA) of 1976 the company actually did not violate any laws.

The author, Nathaniel Rich, admits that such was the case, and in fact, there were no solid data to incriminate PFOA as a toxin during the period in question. If there were any doubt about that, after Bilott's vast trove of data (most of which was derived from DuPont's internal documents) was delivered to the EPA and the West Virginia class action court, there was no "slam dunk" verdict for the plaintiffs. Rather, in 2004, DuPont was mandated to fund a prospective "medical monitoring" trial with unlimited funding for 70,000 state residents, to be followed for as long as it took to determine if any adverse health effects could be reasonably linked to PFOA exposure via drinking water.

As the writer put it, the scientists doing the studies had hit "the epidemiological jackpot": freed from

academic restraints with unlimited funding and time, 12 separate studies were initiated. Well, *seven years later*, in late 2011, the scientific data started to roll in: there were "probable links" found between PFOA and kidney and testicular cancer, high cholesterol, pre-eclampsia and ulcerative colitis. (No specific theories were proposed, nor were any required, as to how PFOA might have provoked these disparate conditions).

Three-thousand five-hundred plaintiffs are now awaiting settlement offers in lieu of going to trial against DuPont, since the links (associations without causation) are sufficient to award financial compensation to anyone suffering from one of the identified conditions.

For our part, in 2005, [the American Council's evaluation](#) [2] of PFOA produced these conclusions:

"While concerns about PFOA's effects on humans have arisen recently, data on PFOA's presence in humans and its effects on both animals and humans has been collected for more than 20 years. ... Research has shown that very high doses of PFOA can cause harm in animals, but the amount of PFOA to which the general population is exposed is hundreds to thousands of times lower, and biological differences may make concerns about some of the observed effects irrelevant to humans. Additionally, studies of workers (who are exposed to much higher doses of PFOA than the general population) have not shown the same effects in humans that occur in animals."

This assessment remains valid today, and any neutral reader of the Rich article will not find anything to dispute it, despite its length and innuendo. In 2005, DuPont did fork over a \$16.5 million settlement with the EPA, which had accused the company of concealing its knowledge of PFOA's toxicity and presence in the environment in violation of TSCA.

However, the company also produced evidence that it had indeed notified West Virginia officials of PFOA's presence and possible health effects, in 1982 and again in 1992. And the official state level of concern for PFOA concentration in the water remains far higher than any level produced by DuPont's PFOA.

Following up on the magazine piece two days later the *Times* wrote in [an editorial](#) [3] that mentions PFOA's "clear danger," although it took seven years of extensive data dredging and 12 different studies to come up with the illnesses said to be linked to it. The *Times* is using this case to once more call for "reform" of TSCA, which is about to become law soon anyway. Note however, that nothing in the old or revised TSCA can keep companies or individuals from breaking the law by toxic dumping.

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[1] <http://www.nytimes.com/2016/01/10/magazine/the-lawyer-who-became-duponts-worst-nightmare.html>

[2] <http://acsh.org/2005/03/teflon-and-human-health-do-the-charges-stick/>

[3] <http://www.nytimes.com/2016/01/12/opinion/despite-clear-dangers-dupont-kept-using-a-toxic-chemical.html>