

Dupont



**ASSIGN
BUSTER**

Some tragic events in the 1950s alerted the public to the devastating effects that a teratogenic substance can have on a developing fetus, although the drug may be perfectly harmless to the mother. Doctors had prescribed the drug thalidomide for pregnant women as a tranquilizer, but they discovered that the drug caused fetal defects such as missing arms, legs, hands, and feet, in addition to many soft tissue malformations. Fetal defects [191] included both physical and functional alterations, such as the possibility of growth retardation, deformities, behavioral problems, genetic alterations, or a higher than average tendency to develop cancer.

The Du Pont policy E. I. du Pont de Nemours & Co., the world's largest chemical manufacturer, has long been concerned with chemical toxicity and exposure. Du Pont uses only a small number of hazardous substances - such as lead, aniline, and redistribution - that require special control. Over the years, the company has promulgated several policies dealing with reproductive hazards, particularly one that addressed the problem of fetal damage from chemical exposure.

If Du Pont discovers that a chemical is a developmental toxin (toxic to the fetus), the company first uses engineering and administrative procedures to eliminate the risk of exposure or to reduce it to an acceptable level.

Engineering procedures: special ventilation equipment
administrative procedures: regulation of exposure time, use of protective clothing
However, if no "acceptable exposure level" has been determined or if engineering and administrative procedures cannot reduce exposure to an acceptable level, the Du Pont policy reads: "females of child bearing capacity shall be excluded from work areas".

The feminist organizations protested, Incriminating this policy as a clear form of genderdiscrimination. They claimed that a considerable number of women are excluded from very well payday jobs, and requested the right for any fertile woman to Du Pont rejected the suggestion that a woman who was appraised of thehealthrisk could then sign a legally valid waiver, because the exclusionary policy was to protect the fetus, not the woman.

Under this policy Du Pont stated that " the waiver of subsequent claims by the female worker would be of no legal significance because the deformed fetus, if born, may have its own rights as a person which could not be waived by [21] the mother. Although some state supreme courts upheld this position, omen's groups continued to view protective exclusion as sex discrimination, especially given the growing evidence that industrial chemicals that can affect a future fetus may also adversely affect the male reproductive system.

Du Pont considered the excluded party's sex to be irrelevant, on grounds that the policy's goal is to protect the susceptible fetus. Du Pont noted that " the complexity of the issue lies in the separate, but not separated, nature of the affected groups - fetus and females". Du Pont excluded women only because they are capable of becoming pregnant and bringing the fetus into the workplace. Du Pont regarded the difficulty of determining pregnancy during the early stages, when the fetus is most vulnerable to damage, as a sound reason for the exclusion policy.

However, women's advocates continued to view companies such as Du Pont as simply remiss in developing technological solutions for the control of

embryologist. A common union complaint is that industry makes the worker safe for the workplace to the point of exclusion, rather than making the workplace safe for the worker and fetus. Management, however, contends that acceptable levels of exposure cannot be achieved using available risk data. 1991 US Supreme Court's decision In January 1981 The New York Times examined a startling development in the nation's workplaces.

Fertile women workers were, in increasing numbers, electing to undergo voluntary sterilization rather than give up high-paying jobs involving exposure to chemicals that are potentially harmful to a developing fetus. This disclosure precipitated discussion of a new civil rights issue with questions raised about whether a company should be allowed to discriminate against a woman to protect her unborn child, or whether the practice of keeping a woman out of certain well-paying jobs because she was fertile was simply another form of sex discrimination in the workplace.

Ten years later, on March 20, 1991, the US Supreme Court decided in the case of *Auto Workers v. Johnson Controls, Inc.* [a relatively obscure company, manufacturing car batteries] that employers cannot legally adopt fetal protection policies that exclude women of childbearing age from a hazardous workplace because such policies involve illegal sex discrimination. However, the Supreme Court decision was, in some respects, narrow. It left American corporations in a state of uncertainty about what type of policy would effectively protect fetus from reproductive hazards.