

BIDEN EPA TRANSITION TEAM MEMBER HELPED DUPONT DODGE RESPONSIBILITY FOR PFOA

Michael McCabe, a former EPA official and aide to Joe Biden, led DuPont's defense of the toxic PFAS chemical PFOA.

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Just south of Charleston a coal barge travels up the Kanawha River, passing the DuPont chemical plant in West Virginia, on Jan. 15, 2015. Photo: Andrew Lichtenstein/Corbis/Getty Images

The Biden transition team has appointed Michael McCabe to its [agency review team](#) at the Environmental Protection Agency. McCabe, who served as Biden's communications and projects director between 1987 and 1995 and as deputy administrator of the EPA at the end of the Clinton administration, led DuPont's defense of the toxic PFAS chemical [PFOA](#).

McCabe began managing DuPont's communications with the EPA about the toxic chemical in 2003, two years after he left his job as deputy administrator of the agency, and continued in that role until at least 2006. As [The Intercept previously reported](#), his still fresh relationships with his former colleagues in government came in handy as McCabe skillfully and successfully helped the giant corporation dodge the agency's efforts to set binding limits on the chemical.



ReLated

How DuPont Slipped Past the EPA

When McCabe began overseeing the team of attorneys and high-level former EPA staffers, the agency had just initiated a “priority review” of [PFOA](#), a perfluorinated chemical DuPont used since the 1950s to make its blockbuster nonstick coating, Teflon. At that point, the chemical had already been discovered in the drinking water of [tens of thousands](#) of people living near one of the company's plants, in Parkersburg, West Virginia. DuPont already knew that PFOA accumulated in workers bodies and caused a wide range of health effects, including cancer, in lab animals. Over time, the chemical would be found to [cause](#) a long list of human health effects in addition to cancer.

If it deemed PFOA sufficiently toxic through the priority review, the EPA could go on to regulate it under several laws, including the Toxic Substances Control Act and the Clean Water Act. As DuPont knew, such a move could trigger hefty cleanup costs, and McCabe's team made every effort to avoid

that outcome. Among the high-profile former EPA officials who worked with him to protect the chemical – and DuPont’s profits from it – during this time was Linda Fisher, an attorney who succeeded him as deputy administrator at the EPA.

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McCabe’s team worked so closely with EPA staff that they sometimes knew what was contained in the agency’s documents before they became public and saw at least one presentation before it was given. The DuPont team also drafted quotes that they attributed to EPA officials in DuPont press releases. In 2007, attorney [Rob Bilott](#), who sued DuPont over the contamination, deposed McCabe. When asked about requesting quotes from the EPA, McCabe said the practice was “customary.”



Senator Biden introduces Wilmington resident Michael McCabe, right, a former member of Biden’s staff, at a Senate hearing on McCabe’s nomination to be a top EPA administrator in February 2000.

Photo: US Congress

Ultimately, his team succeeded in avoiding regulation that would have cost DuPont dearly. One of the upshots of the months of negotiations was an agreement to phase out PFOA. As part of the negotiations for that deal, McCabe’s team requested that the EPA issue reassuring statements about the safety of chemicals and products that contained PFOA. The EPA obliged.

Asked about the EPA's highly favorable statements about PFOA in his December 2007 deposition, McCabe insisted that they were "not a quid pro quo" for the DuPont's agreement to phase it out.

Biden, who represented Delaware in the Senate for 36 years, has a [long and complicated relationship](#) with DuPont, which has been headquartered in the state for more than 200 years. McCabe's consulting company, which led the defense of PFOA, is [headquartered](#) in Delaware as well.

In 2006, the EPA did fine DuPont for having withheld what it knew about the toxicity of PFOA, as well as the chemical's presence in drinking water, in the blood of people living near its West Virginia plant, and in the babies of some of its female workers, two of whom were born with birth defects. At the time, the agency noted that the amount of the fine – \$10.5 million, plus an additional \$6 million for "supplemental environmental projects" – was "the largest civil administrative penalty EPA has ever obtained under any federal environmental statute." Yet the fine was also less than a single day's revenue from DuPont's performance materials division, which used PFOA.



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Bad Chemistry

The deal McCabe's team helped secure was also clearly favorable to DuPont in another way. The phaseout took place over nine years, giving the company ample time to introduce a replacement for its dangerous chemical. A DuPont vice president named Susan Stalnecker sent a letter to then-EPA Administrator Stephen Johnson confirming the company's agreement to participate in the phaseout and alluding to its plan to replace PFOA with another chemical. Stalnecker noted noting that "success in this effort will depend on timely review and approvals for these new products."

DuPont did get timely approval for its PFOA replacement, [GenX](#). But that compound also turned out to be [toxic](#). As with PFOA, the realization came only after DuPont had released it and several other [related PFAS compounds](#) into [people's drinking water](#).

Asked about McCabe's volunteer position on the EPA review team, a spokesperson for Biden's transition team emailed that "Michael McCabe has vast experience and knowledge of the EPA to help the Biden-Harris administration tackle the challenges facing our country. McCabe has recused himself from any matters involving the Toxic Substances Control Act. Additionally, he has also committed to not taking a position within the Biden administration."

DuPont has since gotten out of the PFAS business, which it spun off as a new company known as Chemours – along with much of the legal liability for the harms caused by the chemicals. Last year, Chemours sued DuPont, charging that the former parent company had downplayed its environmental liabilities at the time of the spinoff. A judge dismissed the case in March.

The EPA has still has not regulated any chemical in the [PFAS family](#), which is now understood to contain thousands of compounds. While the Trump EPA pledged to designate PFOA and the closely related chemical PFOS as hazardous, it has [failed to do so](#).

Biden has promised to change that. His environmental justice plan promises to "tackle PFAS pollution by designating PFAS as a hazardous substance, setting enforceable limits for PFAS in the Safe Drinking Water Act, prioritizing substitutes through procurement, and accelerating toxicity studies and research on PFAS." According to a press release from the transition team, the review team McCabe is on will be "responsible for evaluating the operations of the federal agencies so that the incoming Biden-Harris administration is prepared to lead our country on Day One."

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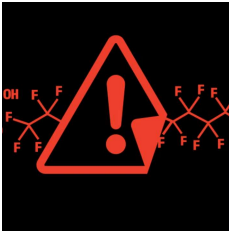
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