

February 1, 2006

Mark Vilaro
Mail Stop 3010
Securities and Exchange Commission
Division of Corporation Finance
Office of the Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: Omission of Shareholder Proposal Submitted by E.I. du Pont de Nemours and Company

Dear Mr. Vilaro:

Green Century Capital Management, Inc (“GCCM”) respectfully requests the staff of the Division of Corporation Finance of the Securities and Exchange Commission (“Staff”) to deny the request by E.I. du Pont de Nemours and Company (“DuPont” or the “Company”) for a no-action letter with respect to the shareholder proposal (“Proposal”) and its resolved clause (the “Resolution”), described below, which GCCM has submitted to DuPont for inclusion in DuPont’s proxy statement and form of proxy for the Company’s 2006 Annual Meeting of Shareholders.

Background: Chemical Security

The Proposal seeks information on the Company’s approach to Chemical Security. It discusses Chemical Security not in the context of financial impact on the Company, but in the context of impact on the environment and public health. Thus it requests a report on “the implications of a policy for reducing potential harm and the number of people in danger from potential catastrophic chemical releases by increasing... inherent security.”

Chemical Security is an important subject of public policy concern. It is defined as the danger posed to communities and the environment by chemical facilities that use large quantities of extremely hazardous substances (EHSs) such as hydrofluoric acid and anhydrous sulfur dioxide. Such facilities present the danger of a catastrophic release of EHSs that can kill or injure a large number of people very quickly and cause related severe environmental damage.

The Environmental Protection Agency has long required facilities that use EHSs to file Risk Management Plans (RMPs) with the agency. Each RMP includes a worst-case scenario describing the number of pounds of an EHS that could be released, and the number of people who live within the “vulnerability zone” of the facility, i.e. close

enough that they could be effected by the EHS release. A comprehensive review of RMPs performed in 2004 showed that 123 facilities in the U.S. each endangered over one million people. Many more facilities each endangered over 100,000 people, over 10,000 people, etc.

The volume of public policy debate surrounding Chemical Security has greatly increased since September 11, 2001. At that time policy makers confronted the danger posed by an *intentional* release of EHSs caused by terrorists, in addition to the previously considered dangers of an *accidental* release.

In 2003, the U.S. Army Surgeon General ranked an attack on a chemical facility second only to a widespread biological attack in the magnitude of its hazard to the public. Reports discussing Chemical Security have been issued by many other groups, including the Department of Homeland Security; Department of Justice; Congressional Research Service; Naval Research Laboratory; Brookings Institution; and Rand Corporation among others.

(<http://www.crtk.org/detail.cfm?docID=765&cat=spills%20and%20emergencies>).

Physical Security and Inherent Security

A central debate within discussions of Chemical Security is the relative importance of “Physical Security” and “Inherent Security.”

Physical security comprises measures that protect a facility from outside attack, for example through the placement of security guards, electronic surveillance equipment, and perimeter fences. Physical security measures do not alter the worst case scenario of the RMP filed by the facility because they do not reduce the quantities of EHSs stored at the plant, and they do not reduce the number of people in the plant’s vulnerability zone. Instead they seek to add security after the fact.

By contrast, Inherent Security comprises measures that fundamentally reduce the danger presented by a facility to the public and the environment. For example, a company can increase the Inherent Security of a facility by reducing the quantity of an EHS stored at a site. Said reduction will by definition alter the worst case scenario of the RMP and reduce the number of people exposed to danger by the facility. This is only one example of an Inherent Security improvement. Many others are possible.

In debates on Chemical Security (for example in commenting on proposed Federal legislation), the chemical industry has consistently argued that public policy on Chemical Security should address only questions of physical security, and should contain no examination or discussion of Inherent Security. By contrast, independent experts have long argued that Inherent Security represents the only failsafe approach to protecting public safety and the environment, and thus should be central to any public policy on Chemical Security. In the words of Nicholas Ashford, “We need to work toward inherently safe technologies that remove the hazard and thus the possibility of an

accident.” (*The Encouragement of Technological Change for Preventing Chemical Accidents: Moving Firms from Secondary Prevention and Mitigation to Primary Prevention*, N.A. Ashford et al., A Report to the U. S. Environmental Protection Agency, Center for Technology, Policy and Industrial Development at MIT, Cambridge, MA, July 1993. Available at <http://hdl.handle.net/1721.1/1561>)

The Proposal

The Proposal requests a report on the Company’s approach to Chemical Security and specifically on the potential for reducing harm to the public and the environment through a focus on Inherent Security in contrast to physical security. This policy focus is present throughout the entire Proposal, including each whereas clause and the ultimate resolution.

Rule 14a-8(i)(7): The Resolution Does Not Concern Ordinary Business Operations

The Company argues that the Resolution concerns ordinary business operations and calls for an internal assessment of risk and is therefore excludable.

The Company mischaracterizes the Resolution as “relat[ing] to the location and operation” of company facilities. A plain reading of the Resolution and the Proposal shows that the central focus is on the public policy implications of an approach to Chemical Security, and on the potential for reducing harm to the public and the environment through a focus on Inherent Security.

RESOLVED, shareholders request that the independent directors of the Board of DuPont prepare a report, at reasonable cost and omitting proprietary information, on the implications of a policy for reducing potential harm and the number of people in danger from potential catastrophic chemical releases by increasing the inherent security of DuPont facilities through such steps as reducing the use and storage of extremely hazardous substances, reengineering processes, and locating facilities outside high-population areas. The report should be available to investors by the 2007 annual meeting.

The Proposal Does Not Request a Risk Assessment

DuPont argues that the resolution calls for an internal risk assessment, yet even a cursory examination of the text of the resolution makes clear that the focus of the Proposal is policy-oriented. The Company quotes the standards set out by *Staff Legal Bulletin No. 14C* (June 28, 2005) (SLB 14C) and tries to draw analogies to the properly excluded shareholder proposal in *Xcel Energy, Inc.* (April 1, 2003). However, GCCM’s Resolution is not analogous to Xcel’s in that the latter specifically called for an assessment of economic risks. The Resolution here, unlike Xcel’s, seeks to minimize practices which adversely affect both the public and the environment through a policy of increasing of Inherent Security.

GCCM's Resolution, in fact, is much more analogous to the proposal discussed in *Exxon Mobil Corporation* (March 18, 2005), also cited by *Bulletin No. 14C*. Like the Exxon proposal, GCCM's Proposal does, in fact, center on discovering opportunities for "minimizing or eliminating operations that may adversely affect the environment or the public's health" and therefore is precisely the kind of resolution the Staff has stated may not be omitted under Rule 14a-8(i)(7).

GCCM is not seeking a report on economic risks to the Company, but rather a report on the possibility of reducing potential harm to the public and the environment through the adoption of policies focused on Inherent Security. A review of the text of the Proposal and the Resolution indicate the subjects that would necessarily be discussed in the report. These include such things as:

- The issue of Chemical Security as it is faced by the Company.
- The policies and programs currently in place at the Company to manage Chemical Security.
- The relative consideration of Physical Security and Inherent Security within current programs;
- Policy and program options for systematically reviewing and decreasing the use of Extremely Hazardous Substances at Company Facilities;
- Policy and program options for reducing the number of people placed in danger by Company facilities in the case of a catastrophic release of EHSs.
- The potential for an increased emphasis on Inherent Security to reduce the number of people endangered by Company facilities.

While some policy options may have the outcome of minimizing certain risks to the Company, the Resolution never asks the Company to quantify or report on said risks. Under SLB 14C this distinction is determinative in the Staff's decisions as to whether or not a proposal may be properly omitted. Because GCCM's Resolution requests neither any explicit risk assessment, nor an accounting of the Company's potential financial losses, it cannot be properly omitted as pertaining to ordinary business operations.

The Proposal Does Not Seek to Micromanage the Company

The Company also accuses GCCM of seeking to micro-manage DuPont's operations. The 1998 rule which the Company cites (*Release No. 34-40018* (May 21, 1998)) states that the proposal may be excluded if it seeks to "micro-manage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." Additionally, this consideration of micro-managing may come into play "where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *Id.*

Under neither of these modes of inquiry would GCCM's Resolution be excludable as attempting to micro-manage the Company. Despite what the Company claims in its letter, the Resolution would not lead to shareholders considering such issues

as what chemicals are used in the Company's chemical business or the "hundreds of tasks undertaken to manage the Company's chemical facilities." In *Exxon Mobil Corporation* (March 15, 2005) the Staff rejected an attempt to omit a proposal where, similar to the current situation, the company tried to mischaracterize the proposal as requiring far more intricate detail than it in fact entailed. Here the Resolution does not ask for specific time-frames or complex methods of implementation, but rather a report on the broad implications of a policy emphasizing Inherent Security.

Furthermore, the past decisions cited by the Company to illustrate that a proposal may be excluded if the subject matter of the report requested falls under the category of ordinary business operations are all inapposite. Both *AT&T Corp.* (Feb. 21, 2001) and *The Mead Corporation* (Jan. 31, 2001) pertained to requests for reports on financial risk assessment. Both *Nike, Inc.* (July 10, 1997) and *The Boeing Company* (Feb. 25, 2005) relate to employment and workforce management and request specific information relating to future wage increases (*Nike, Inc.*) or staff reductions (*The Boeing Company*). *Wal-Mart Stores, Inc.* (Mar. 15, 1999) deals with how a corporation selects its vendor partners, an area which Staff has specifically ruled is an ordinary business operation. In contrast, the Resolution at issue does not address any of the dispositive issues: financial risk assessment, employment or workforce management, or vendor partners.

The decisions cited by the Company to illustrate proposals that seek a review of business activities and associated risks are similarly inapposite, as each contains a specific request for financial data or risk analysis that has no analog in the subject Resolution. *Newmont Mining Corp.* (Feb. 4, 2004) requested a report "on the risk to the company's operations, profitability, and reputation;" *Mead Corporation* (Jan. 31, 2001) focused on the company's "liability methodology and evaluation of risk;" *The Dow Chemical Company* (Feb. 13, 2004) requested a "range of projected costs of remediation or liability." (The Company appears to have cited *Xcel Energy Inc.* (April 1, 2003) in error. This proposal related to the composition of Xcel Energy's board, and was not excluded.)

The same is true of the cases illustrating proposals that deal with specific choices of technology. *WPS Resources Corporation* (Feb. 16, 2001) requested consideration of eight specific technologies or operational practices; *Alliant Techsystems* (May 7, 1996) requested that the company cease production of a specific product category; *Carolina Power & Light Co.* (Mar. 8, 1990) requested highly detailed reports of specific operational data relating to the day-to-day running of the Company. The subject Resolution is not similar to any of these. It is focused on broad policy questions, and not on specifically enumerated technologies or operational details that are properly under the purview of management.

Finally, the Company states that the Resolution pertains to ordinary business decisions because it "requests action relating to the location of office or operating facilities." In fact, the Resolution only mentions the topic of location as one of several factors defining Inherent Security and does not request any action on this topic. Unlike the cases cited by the Company, the Resolution does not request specific changes in

location of any of the Company's plants, but rather mentions location as one of several possible approaches to Inherent Security management. No specific action at all is requested, but rather an example was given of a factor that could constitute practices of Inherent Security.

Rule 14a-8(i)(7): The Resolution Concerns an Area of Significant Social Policy and Should Not Be Excluded

The Staff has recognized that beyond the inquiry of whether or not a proposal concerns matters of ordinary business, proposals may not be excluded if they focus on "sufficiently significant social policy issues...because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." *Release No. 34-40018* (May 21, 1998). SLB 14C also contains guidance in this area and reiterates that a proposal which "focus[es] on 'sufficiently significant social policy issues . . . would not be considered to be excludable, because the proposals would transcend the day-to-day business matters . . .'" *Id. quoting Exchange Act Release No. 40018*.

There are several Staff decisions in recent years, also relating to issues in the environmental field, where proposals were not permitted to be excluded because they pertained to areas of significant social policy. See *General Electric Company* (January 17, 2006); *E.I. du Pont de Nemours and Company* (February 28, 2005). Courts have also acknowledged that significant social policy topics can preclude a company from omitting a shareholder proposal. See *Roosevelt v. E.I. DuPont de Nemours & Company*, 958 F.2d 416, 426 (DC Cir. 1992).

As should be clear from the introductory discussion, the issue of chemical security and the debate over the proper role of Inherent Security is a matter of significant and longstanding social policy concern.

The topic has been the subject of numerous news stories, including editorials in the New York Times published on May 5, 2005 and December 27, 2005, and an op-ed published on September 22, 2004. An article on the subject published by the New York Times on March 16, 2005 was the 3rd most frequently e-mailed story on nytimes.com during the subsequent two weeks, further illustrating the degree of public concern for this issue.

Lawmakers are treating the issue with a similar interest. In 2001, 2002, and 2003 Senator Corzine of New Jersey sponsored bills titled "The Chemical Security Act." In 2005 Senator Collins of Maine, the chairwoman of the Committee on Homeland Security and Governmental Affairs, held hearings and sponsored legislation on Chemical Security. Additionally, the state of New Jersey has just ratified its own rules on the topic, and these standards explicitly discuss and define the concept of Inherent Security at chemical facilities.

It is quite clear that the topic of Inherent Security is a matter of significant social policy, and the Resolution focuses on this issue and not on any request for an internal, quantifiable risk assessment. The Staff look to “both the proposal and the supporting statement as a whole” to determine if the focus of the resolution is a significant social policy issue. *See SBC 14C*. An examination of the proposed Resolution, from the title (“Report on Increasing Inherent Security of Chemical Facilities”) to the content of the supporting statement and the Resolution itself, clearly shows that this Resolution cannot be excluded under Rule 14a-8(i)(7).

Rule 14a-8(i)(10): The Resolution Has Not Already Been Substantially Implemented

The Proposal requests a report on the potential for reducing harm from catastrophic chemical releases by increasing the Inherent Security of facilities. In their request for a no action letter, the Company has listed four actions taken by the Company that they claim substantially implement the Proposal. A plain reading of the Proposal and a review of the actions listed by the Company makes it clear that these actions do not substantially implement the Proposal.

The Proposal requests a report. A central concern expressed by the Proposal is the lack of information available to shareholders about the danger posed by chemical security incidents at Company facilities, and the steps that the company has taken to address this danger:

Whereas: Shareholders know little about our Company’s efforts to prevent and reduce the magnitude of catastrophic incidents at its facilities. Our Company’s most recent 10-K and 10-Q filings contain no information on the possibility of such incidents and their potential impact on the Company or on employees, surrounding communities, and the environment;

To remedy this absence of information, the Proposal requests “a report... on the implications of a policy for reducing potential harm and the number of people in danger from potential catastrophic chemical releases by increasing the Inherent Security.” Because supplying information to shareholders is central to the resolution, actions taken by the Company that do not supply such information to shareholders cannot be said to substantially implement the proposal. *See Newell Rubbermaid* (February 21, 2001).

Two of the four actions described by the Company do not involve any disclosure, publication, or reporting to the public or to shareholders. The simple existence of an Environmental Policy Committee on the Company’s Board absent any published statements or communication on the subject of the Proposal does nothing in and of itself to implement the Proposal. Proponents are not aware of any relevant communication by said committee or the Company. Similarly, the existence of Process Safety Management Programs does nothing to inform shareholders of the approach that the Company takes to Chemical Security and Inherent Security improvements. The referenced Process Safety

Management Program is not described on the Company website or in materials made available to shareholders.

The remaining two actions described by the Company also fail to substantially implement the proposal. Although they involved published statements, these statements do not provide any of the information requested by the Proposal. (We have attached copies of these statements, printed from the Company website, for ease of reference.)

The report on the independent evaluation of the Company's Safety, Health and Environment (SHE) Programs cited by the Company does not actually describe the Company's Safety, Health and Environment Programs. Instead it merely states that a specified outside auditor believes that the Company's SHE Programs are "generally consistent with" some third-party standards. The report does not describe the third-party standards or provide any information on the substance of the Company Programs. There is no mention of Chemical Security or Inherent Security. In fact, it would be impossible for an investor to tell from this report whether the independent evaluation and the SHE Programs include any consideration at all of Chemical Security and Inherent Security policies.

The DuPont Commitment similarly fails to provide the information requested by the proposal even in the most modest way. It is a broad statement of values. While it does contain promises to consider safety and operate responsibly, there is nothing in the Commitment that discusses any specific policies or programs, or that makes any commitments that can be verified either by the Company or by third parties.

Moreover, the Commitment does not mention Chemical Security, and none of the statements on the environment, human health, and safety are placed in the context of Chemical Security concerns. It is this context – relating to the use of extremely hazardous substances and the potential for catastrophic chemical releases – that characterizes the subject of the Proposal and frames the policy issues which the Proposal is requesting the Company to address. Although the Commitment does mention making facilities "inherently safer," there is nothing to indicate that this statement refers to Inherent Safety as it relates to Chemical Security and catastrophic chemical releases, or whether it refers to more mundane and common workplace health and safety.

While the values expressed by the DuPont Commitment are laudable, they do not do any of the following:

- Mention Chemical Security or the possibility of catastrophic releases of extremely hazardous substances;
- Describe the Company's current approach to managing Chemical Security;
- Discuss the relative consideration of Physical Security and Inherent Security by Company programs;
- Discuss policy and program options for systematically reviewing and improving Inherent Security at Company facilities;

- Discuss the impact that an increased emphasis on Inherent Security would have on the number of people endangered by Company facilities or the potential harm to the environment from a catastrophic releases of EHSs.

For these reasons, the Proposal is in no way analogous to the rulings cited by the Company with respect to Rule 14a-8(i)(10). In the cited cases the companies had taken steps which substantially implemented the proposals, either through the adoption of policies, the issuing of reports, or both.

- *The Gap, Inc.* (March 16, 2001). Proponents requested “a report on the child labor practices of Gap suppliers” and related monitoring of said practices. In response the company showed that it had established a code of vendor conduct which included child labor practices, that it had implemented extensive monitoring of this code, and that it had published the results.
- *Xcel Energy, Inc.* (February 17, 2004). Proponents requested a report showing “how the company is responding to rising regulatory, competitive and public pressure to significantly reduce carbon dioxide and other emissions.” In response the company showed that it had posted on its website an environmental report which specifically addressed how the company responded to “pressures to reduce emissions.”
- *Freeport McMoRan Copper & Gold Inc.* (March 5, 2003). Proponents requested several amendments to the company’s Social and Human Rights Policy, and also requested a system of independent monitoring and reporting. The company showed that the concerns raised by the proposed amendments were already addressed by the policy; it showed that it already had an independent monitor in place; and it showed that it was already reporting publicly on these matters.
- *The Talbots Inc.* (April 5, 2002). Proponents requested that the company commit to the implementation of a code of conduct based on ILO human rights standards. The company showed that it had implemented a code of conduct that in detail and scope was equivalent to that required by the ILO.

The Proposal has requested a report on the important public policy issue of Chemical Security, and specifically on the opportunities to reduce potential harm to the public and the environment through improvements to Inherent Security. None of the documents published by the Company contain any direct discussion of Chemical Security that would be recognizable to someone who was familiar with and concerned about the issue. In addition, the existing documents would do nothing to inform shareholders who are not already familiar with the dangers posed by Chemical Security and the use of Extremely Hazardous Substances. Indeed, the woeful lack of public information provided by the Company on any matters related to Chemical Security and Inherent Security increase the likelihood that shareholders will remain unaware of this important policy issue as it relates to their Company.

Conclusion

For all of the above reasons, Green Century Capital Management believes that our resolution is not excludable by virtue of Rule 14a-8(i)(7) or Rule 14a-8(i)(10) and respectfully requests that the Division of Corporation Finance deny DuPont's no-action letter request.

If you have any questions, require further information or wish to discuss this matter further, please do not hesitate to call me at 617-426-2503.

Sincerely,

Andrew Shalit
Director, Shareholder Advocacy
Green Century Capital Management