



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-3010

February 28, 2008

Donald P. McAviney
Corporate Counsel
E. I. du Pont de Nemours and Company
DuPont Legal, D-8048
1007 Market Street
Wilmington, DE 19898

Re: E. I. du Pont de Nemours and Company
Incoming letter dated December 28, 2007

Dear Mr. McAviney:

This is in response to your letter dated December 28, 2007 concerning the shareholder proposal submitted to DuPont by the Free Enterprise Action Fund. We also have received a letter on the proponent's behalf dated January 4, 2008. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponent.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

Sincerely,

Jonathan A. Ingram
Deputy Chief Counsel

Enclosures

cc: Steven J. Milloy
Managing Partner & General Counsel
Action Fund Management, LLC
12309 Briarbush Lane
Potomac, MD 20854

February 28, 2008

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: E. I. du Pont de Nemours and Company
Incoming letter dated December 28, 2007

The proposal requests that the board prepare a global warming report.

We are unable to concur in your view that DuPont may exclude the proposal under rule 14a-8(i)(3). Accordingly, we do not believe that DuPont may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(3).

Sincerely,

Greg Belliston
Special Counsel



DuPont Legal

Donald P. McAviney
Corporate Counsel and Assistant Secretary
DuPont Legal, D-8048
1007 Market Street
Wilmington, DE 19898
Telephone: (302) 774-9564
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OFFICE OF CHIEF COUNSEL
CORPORATION FINANCE

December 28, 2007

VIA: MESSENGER

United States Securities and Exchange Commission
Division of Corporation Finance
Office of the Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: E. I. du Pont de Nemours and Company
Proxy Statement – 2008 Annual Meeting

Ladies and Gentlemen:

On behalf of E. I. du Pont de Nemours and Company (“DuPont”), pursuant to the provisions of Rule 14a-8 of the Securities Exchange Act of 1934, I enclose six copies of a letter in support of DuPont’s request for no action regarding the exclusion from its 2008 annual meeting proxy materials (the “2008 Proxy Materials”) of a shareholder proposal (the “Proposal”) submitted by the Free Enterprise Action Fund (FEAOX). For the reasons set forth in the enclosed letter, the Proposal properly may be omitted from DuPont’s 2008 Proxy Materials. The Proposal is attached as Exhibit A to each of the enclosed six copies. We request that the Staff not recommend any enforcement action if the Proposal is so omitted.

By copy of this letter, FEAOX is being notified of DuPont’s intention to omit the Proposal and supporting statement from its 2008 Proxy Materials.

If you have any questions or require additional information, please contact me at (302) 774-9564 or my colleague, Mary Bowler, at (302) 774-5303. Thank you for your consideration.

Very truly yours,

DPM:rtp

SEC cover no action letter 12-2007 global warming proxy statement

Enclosures

cc: Steven J. Milloy (FEAOX) (with enclosures)



Donald P. McAviney
DuPont Legal, D-8048
1007 Market Street
Wilmington, DE 19898
Telephone: (302) 774-9564
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December 28, 2007

VIA MESSENGER

United States Securities and Exchange Commission
Division of Corporation Finance
Office of the Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: E. I. du Pont de Nemours and Company Proxy
Materials for the 2008 Annual Meeting--Proposal
by The Free Enterprise Action Fund

Ladies and Gentlemen:

I am writing on behalf of E. I. du Pont de Nemours and Company, a Delaware corporation ("DuPont" or the "Company"), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, to respectfully request that the Staff of the Division of Corporation Finance (the "Staff") of the Securities Exchange Commission (the "Commission") concur with the Company's view that, for the reasons stated below, the shareholder proposal and supporting statement (collectively the "Proposal") submitted by The Free Enterprise Action Fund (the "Proponent" or "FEOX") may properly be omitted from the proxy statement and form of proxy (the "Proxy Materials") to be distributed by the Company in connection with its 2008 annual meeting of shareholders.

Pursuant to Rule 14a-8(j)(2), I am enclosing six copies of this letter and the Proponent's letter transmitting the Proposal. A copy of this letter is also being sent to the Proponent as notice of the Company's intent to omit the Proposal from the Proxy Materials.

I. The Proposal

The Proposal requests the Board of Directors of DuPont to prepare a global warming report by October 2008. The text of the resolution of the Proposal is set forth below, and a copy of the Proposal together with its Supporting Statement is included with this letter as Exhibit A.

“Resolved: The shareholders request that the Board of Directors prepare by October 2008, at reasonable expense and omitting proprietary information, a Global Warming Report. The report may describe and discuss how action taken to date by Dupont to reduce its impact on global climate change has affected global climate in terms of any changes in mean global temperature and any undesirable climatic and weather-related events and disasters avoided.”

II. The Proposal is False and Misleading under Rule 14a-8(i)(3) Because it is Vague, Indefinite and Misleading and Therefore in Violation of Rule 14a-9.

The Proposal’s resolution and supporting statement together indicate that because DuPont has publicly announced its support for governmental action concerning global warming, and because there is an ongoing debate about the economic impact of greenhouse gas emission regulation, DuPont should issue a report indicating how its specific actions “to reduce its impact on global climate change has affected global climate in terms of any changes in mean global temperature and any undesirable climatic and weather-related events and disasters avoided.”

The Proposal and the Supporting Statement may properly be omitted from the Company’s 2008 Proxy Materials pursuant to Rule 14a-8(i)(3), which allows the exclusion of a shareholder proposal where the proposal or supporting statement is contrary to any of the Commission’s proxy rules and regulations, including Rule 14a-9, which prohibits materially false or misleading statements in proxy solicitation materials.

The Staff consistently has taken the position that shareholder proposals that are vague and indefinite are excludable under Rule 14a-8(i)(3) as inherently misleading because neither the shareholders nor the Company would be able to determine, with any reasonable amount of certainty, what action or measures should be taken if the proposal were implemented. For example, **Proctor & Gamble Company** (October 25, 2002) permitted omission of a proposal requesting that the board of directors create a specific type of fund as vague and indefinite where the company argued that neither the shareholders nor the company would know how to implement the proposal. See also **Philadelphia Electric Company** (July 30, 1992) (permitting omission of a proposal regarding the creation of a committee of shareholders because the proposal was so vague and indefinite that it could not be determined “exactly what actions or measures the proposal requires.”)

The Proposal is misleading because its key terms, which provide the only guidance as to what the report may contain, are so vague and indefinite that the Company would not know how to issue the requested report. The Proposal seeks a report from the Company that “may describe how action taken to date by DuPont to reduce its impact on global climate change has affected global climate in terms of changes in mean global

temperature and *any undesirable climatic and weather-related events and disasters avoided*" (emphasis added).

The terms *undesirable climatic event* and *undesirable weather-related event* are not defined and are subject to varying interpretations. Neither the shareholders in voting on the Proposal, nor DuPont in preparing the requested report, would know what climatic or weather-related events the Proponent is interested in, and the word "undesirable" is a subjective term also susceptible to varying interpretations.

The adjective "climatic" describes a weather condition that is very broad in its application, and is almost impossible to interpret in the context of the Proposal. The variables which determine climate are numerous and the interactions are complex. Some of those variables are static, including latitude, altitude, proportion of land to water and proximity to oceans and mountains. Other variables are more dynamic and include factors such as the oceans' distribution of heat energy between the equatorial and polar regions, degree of vegetation which affects solar heat absorption, water retention of land and rainfall on a regional level. Climate is commonly defined as the weather averaged over a long period of time. The standard averaging period is 30 years, but other periods may be used depending on the purpose. Climate also includes statistics such as the magnitudes of day-to-day or year-over-year variations in weather. The Intergovernmental Panel on Climate Change (IPCC) defines climate as follows:

"Climate in a narrow sense is usually defined as the "average weather", or more rigorously, as the statistical description in terms of the mean and variability of relevant quantities over a period of time ranging from months to thousands or millions of years. The classical period is 30 years, as defined by the World Meteorological Organization. These quantities are most often surface variables such as temperature, precipitation, and wind. Climate in a wider sense is the state, including a statistical description, of the climate system.¹

Hence, the Proponent's use of the term "climatic event" places an impossible burden on the Company to define climate, and then decide what event or events have affected climate.

1. Intergovernmental Panel on Climate Change. Appendix 1: Glossary.
(http://www.grida.no/climate/ipcc_tar/ipcc_tar/wg1518.htm) Retrieved on 2007-06-01

Additionally, the Proposal uses the term “weather-related event” which is vague and indefinite and is subject to multiple interpretations. “Weather” is generally defined to be the state of the atmosphere at a given time and place, with respect to variables such as temperature, moisture, wind velocity and barometric pressure. While the definition of weather is broad, a “weather-related event” is so broad that it almost defies definition. All of the above terms are so vague and broad that they render the Proposal flawed to the point that the shareholders and the Company would have to speculate as to what the report is actually requesting.

The Proposal also suggests the report contain information on *disasters avoided*. This adds another element of impossibility to the Proposal since it seeks a discussion of an event that has never happened.

Finally, the last sentence of the supporting statement in the Proposal is misleading. In that sentence the Proponent purports to speak on behalf of all shareholders. That sentence reads as follows:

“Shareholders want to know how Dupont’s actions relating to global warming may be affecting climate.”

The Company is not aware that the Proponent is authorized to submit this Proposal on behalf of all shareholders of the Company. The inference from this sentence is that this Proposal has the support of all Company shareholders, which makes the sentence misleading.

In closing, the use of the word “may” should not permit a proposal that is otherwise excludable under Rule 14a-8(i)(3) to be included in the Company’s 2008 Proxy Materials because the vague and indefinite terms are merely suggestive. The Proposal states that the “report *may* (emphasis added) describe and discuss how action taken to date by Dupont to reduce its impact on global climate change has affected global climate in terms of any changes in mean global temperature and any undesirable climatic and weather-related events and disasters avoided”. Because the objectionable terms, as discussed above, are vague and indefinite, the Proposal should not be permitted to be included in the Company’s Proxy Materials because they merely suggest what the sought-after report should contain. With the vague and indefinite terms excluded from the 2008 Proxy Materials for the reasons described above, the resolution calls for a “Global Warming Report” which is, on its face, so vague and indefinite as to also be excludable under Rule 14a-8 (i)(3).

U.S. Securities and Exchange Commission
E. I. du Pont de Nemours and Company
December 28, 2007
Page 5

Conclusion

For the foregoing reasons, the Company respectfully requests that the Staff concur that the Company may omit the Proposal pursuant to Rule 14a-8 (i)(3) from its 2008 Proxy Materials . If you have any questions or require additional information, please contact me at 302-774-9564 or my colleague, Mary Bowler, at 302-774-5303.

Very truly yours,


Corporate Counsel

DPM/rtp
cc: FEAOX (with attachments)

EXHIBIT A

action fund
management, LLC

12309 briarbush lane
potomac, md 20854
t 301/258 2852
f 301/330 3440

BY FAX

November 13, 2007

Mary E. Bowler
Corporate Secretary
Dupont
1007 Market Street
Wilmington, DE 19898

Dear Ms. Bowler:

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Dupont (the "Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's proxy regulations.

The Free Enterprise Action Fund ("FEAOX") is the beneficial owner of approximately 776 shares of the Company's common stock, 481 shares of which have been held continuously for more than a year prior to this date of submission. The FEAOX intends to hold the shares through the date of the Company's next annual meeting of shareholders. The record holder's appropriate verification of the FEAOX's beneficial ownership will follow.

The FEAOX's designated representatives on this matter are Mr. Steven J. Milloy and Dr. Thomas J. Borelli, both of Action Fund Management, LLC, 12309 Briarbush Lane, Potomac, MD 20854. Action Fund Management, LLC is the investment adviser to the FEAOX. Either Mr. Milloy or Dr. Borelli will present the Proposal for consideration at the annual meeting of shareholders.

If you have any questions or wish to discuss the Proposal, please contact Mr. Milloy at 301-258-2852. Copies of correspondence or a request for a "no-action" letter should be forwarded to Mr. Milloy c/o Action Fund Management, LLC, 12309 Briarbush Lane, Potomac, MD 20854.

Sincerely,



Steven J. Milloy

Managing Partner

Investment Adviser to the FEAOX, Owner of Dupont Common Stock

Attachment: Shareholder Proposal: Global Warming Report

Global Warming Report

Resolved: The shareholders request that the Board of Directors prepare by October 2008, at reasonable expense and omitting proprietary information, a Global Warming Report. The report may describe and discuss how action taken to date by Dupont to reduce its impact on global climate change has affected global climate in terms of any changes in mean global temperature and any undesirable climatic and weather-related events and disasters avoided.

Supporting Statement:

Dupont says on its web site that it supports action on global warming. Dupont is a member of the U.S. Climate Action Partnership (USCAP), a group that lobbies for global warming regulation.

But scientific data show that atmospheric levels of carbon dioxide, the greenhouse gas of primary concern in global warming, do not drive global temperature. *See e.g.*, <http://youtube.com/watch?v=XDI2NVTYRXU>.

Even assuming for the sake of argument that atmospheric carbon dioxide levels affect global temperatures, the U.S. Environmental Protection Agency recently projected that U.S. regulation of manmade greenhouse gas emissions would have a trivial impact on atmospheric concentrations of carbon dioxide. *See* <http://www.epa.gov/climatechange/downloads/s1766analysispart1.pdf>.

So U.S. greenhouse gas regulation is not likely to discernibly affect global climate.

Global warming regulation is expected to harm the economy. The Congressional Budget Office, U.S. Department of Energy and prominent economists such as Alan Greenspan, Arthur Laffer and Greg Mankiw all say that cap-and-trade — a type of greenhouse gas regulation promoted by USCAP — would reduce economic growth. *See e.g.*, http://www.junkscience.com/failure_to_disclose.pdf.

Shareholders want to know how Dupont's actions relating to global warming may be affecting global climate.

action fund
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January 4, 2008

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OFFICE OF CHIEF COUNSEL
CORPORATION FINANCE

VIA OVERNIGHT DELIVERY

Office of the Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.W.
Washington, DC 20549

Re: Shareowner Proposal of the Free Enterprise Action Fund to E.I. du Pont de Nemours and Company under Exchange Act Rule 14a-8

Dear Ladies and Gentlemen:

This letter is submitted on behalf of the Free Enterprise Action Fund ("FEAOX") in response to a December 28, 2007 request from E.I. du Pont de Nemours and Company ("DuPont") to the Division of Corporation Finance ("Staff") for a no-action letter concerning the above-captioned shareowner proposal.

Action Fund Management, LLC is the investment advisor to the FEAOX and is authorized to act on its behalf in this matter.

We believe that DuPont's request is without merit and that there is no legal or factual basis for Dupont to exclude the Proposal from its 2008 Proxy Materials.

Finally, we request that Mr. Thomas J. Kim, chief counsel of the Division of Corporation Finance and a former attorney for the General Electric Company, formally recuse himself from any role in this matter.

I. The Proposal is not vague, indefinite and misleading.

The Proposal requests that DuPont prepare a Global Warming report that describes and discusses,

...how action taken to date by Dupont to reduce its impact on global climate change has affected global climate in terms of any changes in mean global temperature and any undesirable climatic and weather-related events and disasters avoided.

Dupont claims the Proposal is vague because neither it nor shareholders will know what is meant by the phrase “any undesirable climatic and weather-related events and disasters avoided.”

But not only is this phrase quite understandable in the context of the entire Proposal — i.e., what impact, if any, are DuPont’s actions having on global climate? — to the extent any ambiguity exists, Dupont may exercise its discretion in completing the report.

Moreover, the phrase is more precise than the generic term “climate change,” which Dupont uses on its web site and in company reports¹.

Finally, Dupont shareholders were quite capable of voting on a similar global warming-related shareholder proposal submitted by this proponent in 2007 (“2007 Proposal”). The 2007 Proposal² requested a report on the

... Extent to which the Company believes human and Company activity will significantly alter global climate...

Dupont did not challenge the 2007 Proposal and so may be presumed to have deemed its language not so vague and indefinite as to merit exclusion from company proxy materials.

II. Thomas Kim should recuse himself from this matter.

We request that Thomas Kim, chief counsel of the Staff, recuse himself from this matter because he is a former attorney for the General Electric Company (“GE”) and he may be biased against the FEAOX because of its shareholder activities.

While Mr. Kim was employed by GE:

- The Staff twice refused to grant GE no-action requests on global warming shareholder proposals filed by the FEAOX;
- FEAOX re-filed its global warming proposal on October 30, 2007 while Mr. Kim may still have been employed by GE;
- A member of Gibson, Dunn & Crutcher, GE’s law firm, was sanctioned by his employer for sending an obscene e-mail to the FEAOX related to a shareholder proposal filed with GE. See <http://blogs.wsj.com/law/2007/02/12/law-blog-email-of-the-day-by-gibson-dunns-larry-simms/>.
- GE joined the U.S. Climate Action Partnership, many members of which have received shareholder proposals from the FEAOX.

¹ See e.g., http://www2.dupont.com/Sustainability/en_US/Footprint/background.html#ghg and http://www2.dupont.com/Sustainability/en_US/assets/downloads/FINAL_BROCHURE_9.28.06.pdf.

² See Dupont, DEF 14A (filed March 19, 2007).

III. Conclusion

Based upon the forgoing analysis, we respectfully request that the Staff reject DuPont's request for a "no-action" letter concerning the Proposal. If the Staff does not concur with our position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of its response. Also, we request to be party to any and all communications between the Staff and DuPont and its representatives concerning the Proposal.

A copy of this correspondence has been timely provided to DuPont and its counsel. In the interest of a fair and balanced process, we request that the Staff notify the undersigned if it receives any correspondence on the Proposal from DuPont or other persons, unless that correspondence has specifically confirmed to the Staff that the Proponent or the undersigned have timely been provided with a copy of the correspondence. If we can provide additional correspondence to address any questions that the Staff may have with respect to this correspondence or DuPont's no-action request, please do not hesitate to call me at 301-258-2852.

Sincerely,



Steven J. Milloy
Managing Partner & General Counsel

cc: Donald P. McAviney, DuPont