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

DIVISION OF
CORPORATION FINANCE

October 15, 2019

Sean D. Major
Air Products and Chemicals, Inc.
majors@airproducts.com

Re: Air Products and Chemicals, Inc.

Dear Mr. Major:

This letter is in regard to your correspondence dated October 14, 2019 concerning the shareholder proposal (the "Proposal") submitted to Air Products and Chemicals, Inc. (the "Company") by The Nathan Cummings Foundation (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its September 20, 2019 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Dorrie Yale
Attorney-Advisor

cc: Laura Campos
The Nathan Cummings Foundation
laura.campos@nathancummings.org

Air Products and Chemicals, Inc.
7201 Hamilton Boulevard
Allentown, PA 18195-1501
T 610-481-4880 F 610-706-5223
www.airproducts.com

Sean D. Major
Executive Vice President, General Counsel and Secretary

October 14, 2019

BY ELECTRONIC MAIL TO SHAREHOLDERPROPOSALS@SEC.GOV

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Shareholder Proposal Submitted by The Nathan Cummings Foundation

Ladies and Gentlemen:

By letter dated September 20, 2019, Air Products and Chemicals, Inc., (the "**Company**"), submitted to the staff of the Securities and Exchange Commission's Division of Corporation Finance (the "**Staff**") a no-action request (the "**No-Action Request**") requesting the Staff's concurrence that the Company could exclude from the proxy materials for its 2020 Annual Meeting of Shareholders a shareholder proposal and supporting statement (the "**Proposal**") received from The Nathan Cummings Foundation (the "**Proponent**").

Enclosed as Exhibit A is a copy of correspondence the Proponent submitted, dated October 11, 2019, withdrawing the Proposal. In reliance on this communication, I am writing to advise the Staff that the No-Action Request is hereby withdrawn.

If you have any questions, please do not hesitate to call me at (610) 481-4880 or our counsel, Matthew C. Franker of Covington & Burling LLP, at (202) 662-5895.

Sincerely,

Sean D. Major
Executive Vice President,
General Counsel and Secretary

Enclosure

cc: Laura Campos
The Nathan Cummings Foundation

Matthew C. Franker
Covington & Burling LLP

<u>Exhibit A</u>

See attached

From: Laura Campos <laura.campos@nathancummings.org>
Sent: Friday, October 11, 2019 11:29 AM
To: Major,Sean <MAJORS@airproducts.com>
Cc: Winston Vaughan <vaughan@ceres.org>; Meredith Benton <benton@whistlestop.capital>
Subject: [External] Withdrawing our proposal

This email is from an external source. Please exercise caution in opening attachments or links.

Dear Sean,

I would like to thank you and your colleagues for taking the time to speak with Winston and me yesterday. We both appreciated the additional information shared and we look forward to continued engagement with Air Products and Chemicals as you work to establish your post-2020 sustainability goals. We would encourage you to set carbon reduction goals in line with those of your peer companies, investor expectations and international agreements such as the Paris Climate Agreement. As long-term investors, we believe such measures are critical to mitigating the material risks associate with climate change. The fact that Air Products and Chemicals' emissions continue to rise in the face of the material risks the company itself says it faces as a result of climate change is a serious concern.

Nevertheless, given Air Products' willingness to continue discussions about its approach to sustainability and climate risk, we are withdrawing the proposal we submitted for inclusion in the company's 2020 proxy statement. It is our hope that this will be the beginning of a productive conversation over the next 8 months and that this dialogue will lead to Air Products' next sustainability report providing better guidance to investors about immediate steps the company is taking to reduce emissions and associated climate risk, including (if determined to be feasible) quantitative, time-bound and company-wide targets for renewable energy procurement and any other short-term carbon reduction strategies company management deems prudent. Further, we hope it will include a new and more ambitious goal for carbon reductions beyond 2020, and that these new goals will align with the scientific consensus around necessary reduction levels.

We would be happy to support Air Products' efforts on this front and Winston and his team of experts at Ceres would be pleased to join additional conversations with appropriate members of the Air Products team to review options for renewable energy procurement and to connect the company with any resources and expertise it might need to evaluate options in this area. As you mentioned on the call, renewable energy is a very dynamic space. The costs of wind and solar in particular have fallen dramatically in recent years as availability has increased and deal structures have evolved to make it easier for companies to make the transition to renewable energy.

We will be in touch in several months to request an update on the company's thinking about its post-2020 goals. In the interim, please don't hesitate to contact Winston or me with any thoughts or questions you might have.

Best,

Laura

THE NATHAN CUMMINGS FOUNDATION

Laura Campos
Director, Corporate & Political Accountability
The Nathan Cummings Foundation
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Sean D. Major
Executive Vice President, General Counsel and Secretary

September 20, 2019

BY ELECTRONIC MAIL TO SHAREHOLDERPROPOSALS@SEC.GOV

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

Re: Shareholder Proposal Submitted by The Nathan Cummings Foundation

Ladies and Gentlemen:

This letter and the enclosed materials are submitted by Air Products and Chemicals, Inc. (the "**Company**") to notify the Securities and Exchange Commission (the "**Commission**") that the Company intends to omit from its proxy statement and form of proxy for its 2020 Annual Meeting of Shareholders (the "**Proxy Materials**") a shareholder proposal and supporting statement (the "**Proposal**") submitted to the Company by The Nathan Cummings Foundation (the "**Proponent**"). We also request confirmation that the staff of the Commission's Division of Corporation Finance (the "**Staff**") will not recommend enforcement action to the Commission if the Company excludes the Proposal from the Proxy Materials for the reasons discussed below.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008), we are emailing this letter to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended, we are simultaneously sending a copy of this letter and its attachment to the Proponent as notice of the Company's intent to omit the Proposal from the Proxy Materials. Likewise, we take this opportunity to inform the Proponent that if the Proponent elects to submit any correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be provided concurrently to the undersigned on behalf of the Company.

THE PROPOSAL

The Proposal sets forth the following resolution to be voted on by shareholders at the Company's 2020 Annual Meeting of Shareholders (the "**2020 Annual Meeting**"):

> **Resolved:** Shareholders request that Air Products & Chemicals, Inc. (Air Products) senior management, with oversight from the Board of Directors, issue a report on climate change mitigation strategies, assessing the feasibility of adopting quantitative, company-wide goals for increasing the company's use of renewable energy. The report should also evaluate any other measures deemed prudent by senior management to substantially reduce Air Products' greenhouse gas (GHG) emissions and climate change risks associated with the use of fossil fuel-based energy. The report should be issued at reasonable cost within one year of the Annual Meeting and omit proprietary information.

A copy of the Proposal is attached hereto as Exhibit A.

BASES FOR EXCLUSION

The Company respectfully requests that the Staff concur in its view that the Company may exclude the Proposal from the Proxy Materials pursuant to:

- Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal; and
- Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations and impermissibly seeks to micromanage the Company.

ANALYSIS

I. The Proposal May be Excluded Under Rule 14a-8(i)(10) Because the Company Has Substantially Implemented the Proposal.

A. Rule 14a-8(i)(10) Background

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has "substantially implemented" the proposal. The Staff has stated that the purpose of the predecessor provision to Rule 14a-8(i)(10) was "to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management." *SEC Release No. 34-12598* (July 7, 1976). Importantly, Rule 14a-8(i)(10) does not require a company to implement every detail of a proposal in order for the proposal to be excluded. The Staff has consistently maintained this interpretation of Rule 14a-8(i)(10) since 1983, when the Commission reversed its prior position of permitting exclusion of a proposal only where a company's implementation efforts had "fully" effectuated the proposal. *SEC Release No. 34-20091* (Aug. 16, 1983); *SEC Release No. 34-40018* (May 21, 1998), at n. 30. Based on this approach, the Staff has consistently taken the position that a proposal has been "substantially implemented" and may be excluded as moot when a company can demonstrate that it has already taken action to address the essential objective of the proposal, and a company's policies, practices and procedures compare favorably with the guidelines of the proposal. *See, e.g.*, *Exelon Corporation* (Feb. 26, 2010) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report disclosing policies and procedures for political contributions based on the company's publicly-disclosed political spending report); *NetApp, Inc.* (June 10, 2015) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting elimination of supermajority voting provisions based on the fact that the company had previously eliminated all supermajority voting requirements from the company's by-laws). Applying this standard, the Staff has stated that "a determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (Mar. 28, 1991) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting that the Company subscribe to the Valdez Principles where the company had already adopted policies, practices and procedures with respect to the environment that compared favorably to the Valdez Principles).

The Staff has consistently concurred with the exclusion of shareholder proposals that, substantially similar to the Proposal, request reports containing information regarding environmental matters that the company has already disclosed. *See*, e.*g*., *Hess Corporation* (Apr. 11, 2019) (permitting exclusion of a proposal requesting a report describing how the company could reduce its carbon footprint and reduce GHG emissions in alignment with the Paris Agreement where the information was already publicly available in the company's sustainability and carbon disclosure reports); *Exxon Mobil Corporation* (Apr. 3, 2019) (same); *Exxon Mobil Corporation* (Mar. 23 2018) (permitting exclusion of a proposal requesting a report describing how the company could adapt its business model to substantially reduce GHG emissions where the requested information was already available in two published reports describing the company's long-term outlook for energy and how it would position itself for a lower-carbon energy future); *Dominion Resources, Inc.* (Feb. 19, 2015) (permitting exclusion of a proposal requesting a report on the company's effort to reduce environmental hazards associated with its coal ash disposal and storage operations when the company had published a report that focused on and provided disclosures regarding the information requested by the proposal); *Entergy Corporation* (Feb. 14, 2014) (permitting exclusion of a proposal that requested a report on near-term actions to reduce the company's GHG emissions, when the company had already disclosed its actions on such topics in various disclosures made available on its website); and *Duke Energy Corporation* (Feb. 21, 2012) (permitting exclusion of a proposal requesting the company assess potential actions to reduce GHG emissions where the requested information had already been disclosed in the company's Form 10-K and annual sustainability report).

The Proposal requests the Company to produce a report addressing climate change mitigation strategies and measures aimed at reducing GHG emissions and climate change risks associated with the use of fossil fuel-based energy. As discussed further below, because the Company has published, and will continue to publish, information regarding its climate change mitigation strategy, the Company believes that it has already addressed the essential objective of the Proposal. Furthermore, the Company has established quantitative, company-wide goals regarding GHG emissions and has increased its use of renewable energy to this end. The Company has disclosed these goals through a variety of means and annually discloses its work toward the achievement of these objectives, including quantitative disclosures regarding increased use of renewable energy. Accordingly, the Company believes it has substantially implemented the Proposal, and it is therefore excludable under Rule 14a-8(i)(10).

B. The Disclosures Related to the Company's Climate Change Mitigation Strategies Substantially Implement the Proposal

The essential objective of the Proposal is that the Company produce a report on climate change mitigation strategies. The Proposal further requests that this report assess the feasibility of adopting quantitative, company-wide goals for increasing use of renewable energy and evaluate any other measures to substantially reduce the Company's GHG emissions and climate change risks associated with the use of fossil fuel-based energy. The Company currently provides significant information regarding its climate change mitigation strategy, including steps to increase its use of renewable energy and measures aimed at reducing GHG emissions and addressing climate-related risks in the following publicly available disclosures: (i) the Company's 2019 Sustainability Report (the "**2019 Sustainability Report**")[1], which is largely focused on the use of resources and reducing the Company's environmental footprint; (ii) the Company's Climate Change Policy Statement (the "**CC Policy Statement**")[2], which states the Company's strategy for addressing climate change and provides information regarding the Company's GHG emissions reporting; (iii) the Company's 2019 Carbon Disclosure Programme Climate Change Questionnaire response (the "**2019 CDP Response**")[3], which provides detailed information relating to

[1] http://www.airproducts.com/~/media/Files/PDF/company/2019-Sustainability-Report.pdf?la=en

[2] http://www.airproducts.com/Company/Sustainability/environment-health-and-safety/environment.aspx

[3] http://www.airproducts.com/~/media/Files/PDF/company/CDP-response-2019.pdf

climate change and GHG use in response to a global reporting framework; and (iv) a summary of the Company's sustainable product offerings (the "**Product Offerings**"[4] and, together with the 2019 Sustainability Report, the 2019 CDP Response and the Product Offerings, the "**Disclosures**.)"

The Company believes it has substantially implemented the Proposal, and it is therefore excludable under Rule 14a-8(i)(10), because the information contained in the Disclosures, addresses the essential objective of the Proposal. The following table references the Disclosures relating to each element of the Proposal. A more detailed discussion of the Company's implementation of the Proposal follows below.

Proposal Request	**Company Disclosures**
"issue a report on climate change mitigation strategies"	• 2019 Sustainability Report • CC Policy Statement • 2019 CDP Response
"assessing the feasibility of adopting quantitative, company-wide goals for increasing the Company's use of renewable energy"	• 2019 Sustainability Report, pages 4-5, 14, 20-21, 24-25, 37-44, 51 • 2019 CDP Response, pages 27-31, 56 • CC Policy Statement
"evaluate any other measures deemed prudent by senior management to substantially reduce Air Products' greenhouse gas (GHG) emissions and the climate change risks associated with the use of fossil fuel-based energy."	• 2019 Sustainability Report, pages 10, 14, 16-21, 24-25, 29, 37-44, 46, 51 • CC Policy Statement • 2019 CDP Response, pages 1, 4-16, 20-27, 32-34, 47-49, 64-66, 67-68, 69-70 • Product Offerings

The Disclosures substantially implement the "essential objective" of the Proposal because they provide extensive detail related to the Company's climate change mitigation strategy, Company-wide goals related to combating climate change and reducing GHG emissions and increased use of renewable energy.

1. Climate Change Mitigation Strategies

The Proposal calls for the issuance of a report that describes the Company's "climate change mitigation strategy." The Disclosures include extensive information related to the Company's climate change mitigation strategy, including the following:

- *2019 Sustainability Report*:
    - Page 10: Providing the strategy, opportunities and risks related to providing its customers with innovative products that "benefit the environment in a more efficient and sustainable manner."
    - Page 10: "As the world's largest supplier of hydrogen, we supply vast quantities of hydrogen to petroleum refiners to lower sulfur content and help in the making of cleaner-burning gasoline and diesel fuels, significantly reducing vehicle emissions."

[4] http://www.airproducts.com/Company/Sustainability/sustainable-offerings.aspx

- Page 14: "[O]ur products enable clean energy and water, and improve energy efficiency for our customers. We are also investing in research and development to improve efficiencies and reduce environmental impact for our company and our customers."
- Pages 16-17 and 46-47: Providing information related to improved Company processes for the production and delivery of industrial gases and new or improved applications for industrial gas products, including constructing hydrogen production and distribution facilities to support the expansion of hydrogen fuel cells as an alternative to fossil fuels.
- Pages 18-21 and 24-25: Describing the use and benefits of the Company's gases, equipment and applications that enable its customers and users to improve sustainability, reduce energy use and lower emissions.
- Pages 31 and 39: Describing the board of directors' oversight of environmental performance and composition and responsibilities of the Company's Sustainability Leadership Council.
- Pages 39-44: Describing the Company's sustainability strategy, programs and progress towards sustainability objectives, including detailed discussion related to the Company's GHG and climate change strategy to "develop[ing] and deploy[ing] products and clean energy technologies with the potential to reduce emissions across energy supply chains."

- *CC Policy Statement*:
  - Providing the Company's long-term strategy for responding to climate change.

- *2019 CDP Response*:
  - Pages 4-16: Providing extensive discussion surrounding:
    - the Company's interdisciplinary approach to managing sustainability, which is led by the Company's Chairman, President and CEO and overseen by the board of directors and its Corporate Governance and Nominating Committee, and the role and function of the Company's Sustainability Leadership Council and Greenhouse Gases Center of Excellence;
    - the Company's oversight and monitoring of climate-related issues;
    - general strategy and efforts for identifying and assessing climate-related risks;
    - processes for managing climate-related risks and opportunities; and
    - the dedication of half of the Company's research and development budget to products or processes that reduce GHG emissions and address other sustainability issues.
  - Pages 20-27: Providing extensive discussion surrounding identified climate-related risks and opportunities and how such risks and risk mitigation strategies have factored into the Company's financial planning process and general business strategy.
  - Pages 32-34: Describing methods used by the Company to drive investment in emission reductions activities.
  - Pages 47-49: Describing changes in the Company's gross global emissions from the prior year and certain emission reduction activities undertaken by the Company from the prior year.

  - Pages 64-66: Describing the Company's continuing use of renewable energy sources in order to reduce its energy costs and environmental footprint.
  - Pages 67-68: Describing legislative mandates with which the Company engages in an effort to support the development and use of renewable, clean energy.
  - Pages 69-70: Describing engagement activities with worldwide trade and industry associations that have supportive environmental positions.

2. <u>Assessing the Feasibility of Adopting Quantitative, Company-Wide Goals for Increasing the Company's Use of Renewable Energy</u>

The Proposal notes that the requested report should "assess[] the feasibility of adopting quantitative, company-wide goals for increasing the Company's use of renewable energy." The Disclosures provide detailed information related to the adoption of Company-wide emissions goals and the importance of increased use of renewable energy to these efforts. In addition, the Disclosures provide significant information regarding the Company's progress towards achieving such goals, including as follows:

- *2019 Sustainability Report*:
  - Pages 4-5 and 38-44: Describing the Company's 2020 sustainability goals related to the Company's "Grow-Conserve-Care" sustainability framework (the "**2020 Goals**"), including (i) enabling customers to avoid carbon dioxide emissions while contributing greater than 50% of the Company's revenues from sustainable offerings, (ii) reducing GHG emissions intensity by 2% from 2015 levels, (iii) improving distribution efficiency and reducing carbon dioxide emissions intensity by 10% from 2015 levels and (iv) conserving water and lowering water use intensity by 5% from 2015 levels.
  - Page 14: Describing the Company's programs and products that align with the United Nation's Sustainable Development Goals developed in 2015.

- *CC Policy Statement*:
  - Providing detailed discussion surrounding the setting of the 2020 Goals and the Company's progress towards achieving the 2020 Goals.

- *2019 CDP Response*:
  - Pages 27-31: Providing details of the Company's emission intensity targets and progress made against such targets.

- Other Disclosures:
  - In February 2019 the Company announced a partnership with Ørsted, a global leader in offshore wind power, to supply the Company's United Kingdom merchant supply production sites with renewable energy.[5] The press release announcing the transaction states that the partnership "demonstrates Air Products' sustainability commitment to responsible supply chain energy sourcing whenever possible, for its industrial gas production activities."

[5] http://www.airproducts.com/Company/news-center/2019/02/0225-air-products-sources-renewable-electricity-for-uk-production-sites-uk.aspx

3. Evaluate any Other Measures Deemed Prudent by Senior Management to Substantially Reduce the Company's GHG Emissions and the Climate Change Risks Associated with the Use of Fossil Fuel-Based Energy

Finally, the Proposal states that the requested report should evaluate "any other GHG emissions and the climate change risks associated with the use of fossil fuel-based energy." In addition to the extensive information already described above and included in the 2019 Sustainability Report, the CC Policy Statement and the 2019 CDP Response, the Disclosures provide additional information related to the Company's evaluation of numerous climate-related opportunities and risks the Company faces and how the Company identifies, assesses, monitors and manages such opportunities and risks, including as follows:

- *Sustainable Offerings*
    - Providing a detailed description of the Company's gases, equipment and applications that enable its customers to contribute to cleaner air and GHG emissions mitigation. Such products include:
        - Oxy-fuel combustion technologies, used in energy-intensive applications such as cement and glass manufacturing to increase production, lower fuel costs and reduce emissions.
        - Hydrogen used in refining heavier, sour crudes, in order to increase yields and reduce emissions for cleaner transportation fuels.
        - Smartfuel hydrogen fueling station technologies, in order to eliminate or significantly reduce emissions.

In addition, as disclosed in the 2019 CDP Response, the Company is continuing to invest significant amounts in research and development opportunities that enable its customers to reduce their environmental footprint, as well as projects to improve the Company's own processes. For example, in 2018 the Company used half of its research and development budget of $65 million on products and processes that reduce GHGs and address other sustainability issues and concerns. Notable projects recently implemented by the Company that focus on clean energy and reducing emissions, and disclosed in the 2019 Sustainability Report and 2019 CDP Response, included:

- commissioning a world-scale steam methane reformer in Baytown, Texas to supply hydrogen and carbon monoxide to customers linked to the Company's hydrogen and carbon monoxide pipeline networks, with the plant featuring technology upgrades in order to maximize energy efficiency and reduce emissions;

- expanding the Company's use of renewable energy in 2018 from wind, solar and hydropower facilities around the world; and

- applying blockchain technology to certify green electricity.

Further, as disclosed in the 2019 Sustainability Report and 2019 CDP Response, the Company's board of directors has oversight of the Company's environmental performance, with the Company's Chief Executive Officer and other members of senior management being responsible for assessing and managing the Company's risk exposure and whether certain risks will have a material impact on the Company's business. The Company's Sustainability Leadership Council sets its sustainability strategy and reviews programs and progress on a regular basis to assess progress towards achieving the

Company's sustainability objectives. The Company's Greenhouse Gases Center of Excellence, which is comprised of environmental subject matter experts from the Company's operating regions, identifies and reviews risks related to climate change at the regional level at least annually. Members of this Center of Excellence communicate risks to potentially impacted businesses to develop strategies and execute plans to address climate-related risks. Further, the Company has implemented a Sustainability Team that supports all aspects of sustainability and reports to the Company's Senior Vice President, Chief Information Officer and Special Advisor to the Chairman of the Board of Directors.

As noted above, the essential objective of the Proposal is for the Company to issue a report on climate change mitigation strategies. As described throughout this request, the Company believes it has substantially implemented the essential objective of the Proposal through the actions described in the Disclosures, which provide extensive detail related to the Company's climate change mitigation strategy, including its goals and progress toward reducing GHG emissions and its increased use of renewable energy. As a result, the Disclosures compare favorably with the guidelines of the Proposal, and therefore, the Proposal is properly excludable under Rule 14a-8(i)(10).

II. The Proposal May be Excluded Under Rule 14a-8(i)(7) Because the Proposal Relates to the Company's Ordinary Business Operations and Impermissibly Seeks to Micromanage the Company.

A. Rule 14a-8(i)(7) Background

Rule 14a-8(i)(7) permits the exclusion of shareholder proposals dealing with matters relating to a company's "ordinary business operations." The Commission has stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." *SEC Release No. 34-40018* (May 21, 1998). The term "ordinary business" in this context refers to "matters that are not necessarily 'ordinary' in the common meaning of the word, and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *Id.*

The ordinary business exclusion rests on two central considerations: (1) the subject matter of the proposal (*i.e.*, whether the subject matter of the proposal concerns tasks that are "so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight"), provided the proposal does not raise significant social policy considerations that transcend ordinary business; and (2) the degree to which the proposal attempts to micromanage a 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." *SEC Release No. 34-40018* (May 21, 1998); *SEC Release No. 34-20091* (Aug. 16, 1983). A proposal may involve micromanagement if it "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *Id.* Determinations as to the excludability of proposals on the basis of micromanagement "will be made on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed." *Id.* The Company believes the Proposal may be excluded under each of these considerations.

B. The Subject Matter of the Proposal Relates to the Company's Ordinary Business

The Commission has stated that the Staff will consider whether the subject matter of a report involves a matter of ordinary business and, where it does, the proposal may be excluded under Rule 14a-

8(i)(7). *SEC Release No. 34-20091 (Aug. 16, 1983)*; Staff Legal Bulletin 14E (Oct. 7, 2009). On this basis, the Staff has consistently allowed companies to exclude proposals under the ordinary business prong of Rule 14a-8(i)(7) where the proposal has requested a report regarding increased use of renewable energy or energy efficiency improvements. *See Red Hat, Inc.* (June 12, 2018) (permitting exclusion of a proposal requesting a report assessing the feasibility of adopting enterprise-wide, quantitative, time-bound targets for increasing renewable energy sourcing); *Rite Aid Corporation* (Apr. 17, 2018) (permitting exclusion of a proposal requesting a report assessing the feasibility of adopting quantitative, company-wide goals for increasing energy efficiency and use of renewable energy); *Gilead Sciences, Inc.* (Feb. 15, 2018) (same); FirstEnergy Corporation (Mar. 8, 2013) (requesting a report on diversifying the company's energy resources to include increased energy efficiency and renewable energy resources); *FLIR Systems, Inc.* (Feb. 6, 2013) (requesting a report describing the company's short- and long-term strategies on energy use management); *see also MGE Energy, Inc.* (Mar. 13, 2019) (requesting a report describing how the company could eliminate coal and move to 100% renewable energy by 2050). Similarly, the Staff has long permitted companies to exclude proposals requesting action to increase use of renewable energy or make energy efficiency improvements. *See The TJX Companies, Inc.* (Mar. 8, 2016) (requesting adoption of company-wide quantitative targets to increase renewable energy sourcing and/or production); *CVS Health Corporation* (Mar. 8, 2016) (same); *Apple Inc.* (Dec. 5, 2014) (requesting an estimate of investment in renewable sources of electricity); *Dominion Resources* (Feb. 19, 2014) (requesting the development of options and a report relating to development of renewable energy); *Pepco Holdings, Inc.* (Feb. 11, 2011) (requesting company action and a report relating to development of solar power).

The Proposal, when read together with the supporting statement, focuses primarily on the Company's development of a climate change mitigation strategy, and to this end seeks adoption of quantitative, company-wide goals for increasing the Company's use of renewable energy and measures to substantially reduce its GHG emissions and climate change risks associated with the use of fossil fuel-based energy. The supporting statement asserts that the principal benefit of the Proposal to the Company would be to "insulate our company from regulatory uncertainty and also position Air Products as a company contributing to climate solutions." The supporting statement also states that measures to reduce GHG emissions are "practical and cost-effective," notes that renewable sources are cheaper than fossil fuels in many areas and (inaccurately) characterizes the Company's objective of reducing GHG emissions intensity as "very modest." These statements indicate that the Proposal is focused on the Company's ordinary business, namely its assessment of and response to the business risks posed by climate change, the Company's energy sourcing practices and environmental reporting. In this respect the Proposal and its animating objective are substantially the same as the no-action letters referenced in the preceding paragraph that have permitted the exclusion under Rule 14a-8(i)(7) of proposals seeking reports relating to increased use of renewable energy. Accordingly, the Proposal is properly excludable as relating to the Company's ordinary business.

C. The Proposal Seeks to Micromanage the Company by Imposing Specific Time Frames and Methods to Implement Complex Policies.

The Proposal is also excludable under Rule 14a-8(i)(7) because it seeks to micromanage the content of the requested report. As recently explained by the Staff, the consideration of the excludability of a proposal based on micromanagement "looks only to the degree to which a proposal seeks to micromanage" and does not focus on the subject matter of the proposal. *Staff Legal Bulletin No. 14J* (Oct. 23, 2018) ("**SLB 14J**"). Thus, a proposal that may not be excludable based on its subject matter may be excludable if it seeks to micromanage the company. In SLB 14J the Staff confirmed that this framework also applies to proposals that call for a study or report. For example, the Staff confirmed that a proposal that seeks an intricately detailed study or report may be excluded on micromanagement grounds, especially if the study or report relates to the imposition or assumption of specific timeframes or methods for implementing complex policies.

Applying these principles, the Staff has recently permitted exclusion of proposals that requested a company to adopt company-wide, quantitative targets for reducing GHG emissions and issue a report discussing its plans and progress towards achieving these targets. *See Verizon Communications Inc.* (Mar. 6, 2018) (permitting exclusion of a proposal requesting a report evaluating the feasibility of achieving "net-zero" GHG emissions by 2030); *PayPal Holdings, Inc.* (Mar. 6, 2018) (same); *Amazon.com, Inc.* (Mar. 6, 2018) (same); *EOG Resources, Inc.* (Feb. 26, 2018) (permitting exclusion of a proposal requesting adoption of company-wide, quantitative, time-bound targets for reducing GHG emissions and publication of a report discussing plans and progress toward achieving these targets); *see also Exxon Mobil Corporation* (Apr. 2, 2019) (permitting exclusion of a proposal that would require the company to adopt targets aligned with the goals of the 2015 Paris Climate Agreement); *Devon Energy Corporation* (Mar. 4, 2019) (same); *J.B. Hunt Transport Services, Inc.* (Feb. 14, 2019) (same); *see further The Goldman Sachs Group, Inc.* (Mar. 12, 2019) (permitting exclusion of a proposal that would require the company to manage its lending and investment activities in alignment with the goals of the 2015 Paris Climate Agreement); *Wells Fargo & Company* (Mar. 5, 2019) (same).

Under the Proposal, the requested report is to include an assessment of the feasibility of adopting quantitative, company-wide goals for increasing the Company's use of renewable energy and an evaluation of measures that will substantially reduce the Company's GHG emissions and the climate change risks associated with the use of fossil fuel-based energy. The Proposal would replace the balancing of many factors that direct management's decisions on how to offer its products, services and solutions and manage its operations. These decisions are complex in nature and shareholders as a group are not in a position to make an informed decision on these matters.

The Company is a worldwide supplier of products, services and solutions that include atmospheric gases, process and specialty gases, equipment and services. The Company's success depends to a great extent on its ability to continue to develop and distribute products and services to its customers. This requires a deep commitment to research and development activities to establish the safety and effectiveness of the Company's products and services, while at the same time ensuring that these products and services make the Company's customers' processes better and have a positive environmental impact. The Company assesses the potential environmental impacts of its products through a risk review process that establishes risk management measures based on a product's intrinsic hazards. In addition, the Company conducts life cycle assessments of products and processes, such as hydrogen, nitrogen and oxygen production technologies, to assess environmental impacts. The Company's Chief Executive Officer and other members of senior management are responsible for assessing and managing the potential environmental impacts of the Company's business and the Company's board of directors exercises oversight over the Company's environmental performance.

The Company acts on the important environmental issues referenced by the Proposal through its policies and procedures designed to assess and mitigate climate change risks associated with the use of fossil fuel-based energy. As discussed above, this includes setting specific quantitative, company-wide objectives and providing extensive disclosure regarding these objectives and the Company's success toward achieving these objectives. Identifying, assessing and implementing policies and procedures to help mitigate climate change risks involves complex operational decisions made by management personnel at various levels across the Company's business segments based on analyses, projections and assumptions regarding the Company's operations and long-term strategy, anticipated technological development, projected cash flows and capital expenditure requirements. The allocation of resources among these different strategies requires complex business decisions and judgments to be made by Company management.

This process is particularly nuanced for the Company, as a core focus of its business is to increase the energy efficiency of its customers. This often has the effect of providing substantial savings in GHG emissions for the Company's customers while resulting in an increase in the Company's GHG emissions due to the increased scope of its operations. The Company carefully monitors and discloses its GHG emissions as well as savings delivered to customers in order to assess the true environmental impact of its operations (for example, the Company achieved 55 million metric tonnes of CO_2 savings for its customers in 2018, which was nearly double the Company's aggregate direct and indirect CO_2 emissions that year). A focus solely on the Company's emissions, as requested by the Proposal, would potentially foreclose significant business opportunities for the Company while resulting in increased GHG emissions on an aggregate basis. In this regard, the Company is developing new objectives to build upon the achievement of the 2020 Goals (which were established in 2016 for achievement by 2020). Implementation of the Proposal would interfere with this process by replacing the judgment of the Company's management and board of directors with respect to the consideration of how to evaluate environmental risks, which in turn would significantly affect the Company's long-term growth strategy. These aspects of the Company's business are too complex for shareholders to exercise direct oversight.

Finally, as discussed throughout this request, the Company has long recognized the importance of reducing its carbon footprint and conducting its business in an environmentally responsible manner. The Company has spent a significant amount of time developing a strategy to mitigate the environmental impact of its operations and, as summarized above, provide investors and other interested parties with a substantial amount of information on this subject through the Disclosures. The Proposal ignores this information and second guesses the Company's well-reasoned goals for mitigating the effects of climate change. The Proposal accordingly seeks to micromanage the Company's operations by interfering with management's essential function of making day-to-day business and operational decisions on behalf of the Company. These decisions are properly within the province of management, subject to board oversight, and should not be exercised directly by shareholders. As a result, the Proposal is excludable under Rule 14a-8(i)(7).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that the Company may exclude the Proposal from the Proxy Materials. Should the Staff disagree with the conclusions set forth in this letter, or should you require any additional information in support of our position, we would welcome the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. If we can be of any further assistance in this matter, please do not hesitate to call me at (610) 481-4880 or our counsel, Matthew C. Franker of Covington & Burling LLP, at (202) 662-5895.

Sincerely,

Sean D. Major
Executive Vice President,
General Counsel and Secretary

Enclosure

cc: Laura Campos
The Nathan Cummings Foundation

Matthew C. Franker
Covington & Burling LLP

Exhibit A

Shareholder Proposal from The Nathan Cummings Foundation

THE · NATHAN · CUMMINGS · FOUNDATION

August 13, 2019

Sean D. Major
EVP, General Counsel & Secretary
Air Products and Chemicals, Inc.
7201 Hamilton Boulevard
Allentown, PA 18195-1501

Dear Mr. Major,

The Nathan Cummings Foundation is an endowed institution with approximately $450 million of investments, including investments in Air Products and Chemicals. As an institutional investor, the Foundation believes that the way in which a company approaches environmental, social and governance issues like climate change has important implications for long-term shareholder value.

It is with this in mind that we submit this resolution for inclusion in Air Products and Chemicals, Inc.'s proxy statement under Rule 14a-8 of the general rules and regulations of the Securities Exchange Act of 1934. The Nathan Cummings Foundation is the primary sponsor of this proposal.

The Nathan Cummings Foundation is the beneficial owner of over $2,000 worth of shares of Air Products and Chemicals, Inc., stock. Verification of this ownership, provided by our custodian, Amalgamated Bank, will be sent under separate cover. We have continuously held over $2,000 worth of these shares of Air Products and Chemicals, Inc., for more than one year and will continue to hold these shares through the next shareholder meeting.

If you have any questions or concerns about the Foundation's submission of this resolution, please contact me at (212) 787-7300. Thank you for your time.

Sincerely,

L. Campos

Laura Campos
Director, Corporate & Political Accountability

475 TENTH AVENUE · 14TH FLOOR · NEW YORK, NEW YORK 10018
Phone 212.787.7300 · Fax 212.787.7377 · www.nathancummings.org

Resolved: Shareholders request that Air Products & Chemicals, Inc. (Air Products) senior management, with oversight from the Board of Directors, issue a report on climate change mitigation strategies, assessing the feasibility of adopting quantitative, company-wide goals for increasing the company's use of renewable energy. The report should also evaluate any other measures deemed prudent by senior management to substantially reduce Air Products' greenhouse gas (GHG) emissions and the climate change risks associated with the use of fossil fuel-based energy. The report should be issued at reasonable cost within one year of Air Products' 2020 annual meeting of shareholders and omit proprietary information.

Supporting Statement: By assessing the feasibility of establishing goals to increase renewable energy usage and by evaluating other measures to reduce GHG emissions and climate risk, Air Products could prepare to take steps to reduce its emissions of the greenhouse gases contributing to climate change.

The Intergovernmental Panel on Climate Change estimates that a 45% reduction in anthropogenic GHG emissions globally is needed (from 2010 levels) by 2030 to avoid the most extreme impacts of climate change (*Global Warming of 1.5 degrees C*, IPCC, Oct 2018). Assessing the feasibility of clean energy goals and other GHG-reducing measures could serve as a practical step towards aligning Air Products' business operations with global efforts to limit climate change. This could help insulate our company from regulatory uncertainty and also position Air Products as a company contributing to climate solutions.

Fortuitously, many major companies are finding that GHG-reducing measures are practical, and cost-effective. As costs have fallen, carbon-free, renewable energy sources like wind and solar have become, in many markets, the least expensive source of electricity. According to the 2019 *Sustainable Energy in America Factbook (Bloomberg)*, "at $27-61/MWh without accounting for tax credits, onshore wind is cheaper than new gas-fired plants for bulk electricity generation in most areas of the U.S."

Unfortunately, Air Products' website (as accessed August 3, 2019) lacks details on its plans to adopt clean energy. It mentions a very modest goal to reduce GHG emissions intensity by two percent by 2020 against a 2015 baseline and references renewable energy efforts in specific markets including France and the United Kingdom. This gives investors little information about Air Products' overall approach or future plans to address climate risk. As such, Air Products lags behind other chemical makers such as 3M, Royal DSM and AkzoNobel, which participate in large scale renewable electricity projects. Air Products also lags behind the over 190 leading global companies that have publicly committed to going 100% renewable (the full list is available at http://there100.org/).

Accordingly, we urge Air Products & Chemicals to emulate the best climate risk mitigation practices utilized by its corporate peers and study the feasibility of adopting long-term clean energy sourcing goals.