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September 24, 2021

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 2022 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**"). The Company requests 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), this letter is being emailed to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended, a copy of this letter and its attachment are being provided to the Proponent simultaneously as notice of the Company's intent to omit the Proposal from the Proxy Materials. If the Proponent elects to submit any correspondence to the Commission or the Staff with respect to the Proposal, it should provide a copy of that correspondence 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 2022 Annual Meeting of Shareholders (the "**2022 Annual Meeting**"):

> **Resolved:** Shareholders request that Air Products address the risks and opportunities presented by climate change and the global transition toward net zero emissions by setting emission reduction targets covering the Company's full value chain (Scope 1, 2 and 3) GHG emissions.
>
> The supporting statement accompanying the Proposal further states the following:
>
> In assessing what targets to set, we recommend, at management's discretion, consideration of the following:

- Adopting short, medium and long-term GHG emissions reduction targets taking into consideration approaches used by advisory groups such [as] the Science Based Targets initiative (through which over 1,500 companies have set or committed to set science-based GHG reduction targets).

- Adopting quantitative targets to increase sourcing of renewable energy, energy efficiency and production of green hydrogen.

- Assessing the disparate impacts of the Company's climate change contributions on communities of color and committing to reduce or mitigate local community health impacts from the cumulative emissions generated from its facilities.

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)(7) because the Proposal relates to the Company's ordinary business operations and impermissibly seeks to micromanage the Company; and

- Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

ANALYSIS

I. 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: whether the proposal (i) 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" and (ii) "seeks to 'micromanage' 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." *Id*. The Company believes the Proposal is excludable under each of these considerations.

B. The Proposal Relates to the Company's Ordinary Business Operations

The Company is a worldwide supplier of products, services and solutions that include atmospheric gases, process and specialty gases, equipment and services. The Company is the world's largest supplier of hydrogen and has built leading positions in growth markets such as helium and liquefied natural gas process technology and equipment. The Company also develops, engineers, builds, owns and operates some of the world's largest industrial gas projects, including gasification projects that sustainably convert abundant natural resources into syngas for the production of high-value power, fuels and chemicals, carbon capture projects and world-scale low and no-carbon hydrogen projects that will support global energy transition away from hydrocarbons.

The Staff has noted that when analyzing a proposal to determine its underlying concern or central purpose, that it will review both the resolved clause and the supporting statement to analyze the proposal in its entirety.[1] Accordingly, in determining whether the Proposal relates to the Company's ordinary business the relevant focus is not only on emission reduction targets referenced in the resolved clause, but also the Proposal's recommendation that management accomplish emissions reductions by (i) "[a]dopting short, medium and long-term GHG emissions reduction targets," (ii) "adopting quantitative targets to increase sourcing of renewable energy, energy efficiency and production of green hydrogen" and (iii) committing to reducing or mitigating "local community health impacts" from Company emissions. The Company's specific emissions reduction targets, the type and manner of achieving energy efficiency objectives, the type and method of production of the gases the Company sells and community relations matters all concern the Company's ordinary business operations, thereby rendering the Proposal excludable under Rule 14a-8(i)(7).

The Company is pursuing a focused, deliberately constructed growth strategy focused on developing projects to improve the environmental sustainability of its customers and support energy transition away from carbon-based fuels. The Company has developed a rigorous target to reduce its greenhouse gas ("**GHG**") emissions intensity that is intertwined with this growth strategy.[2] Execution of this strategy will drive the Company's economic growth for the remainder of this decade and beyond and necessitates a focus on projects that will drive significant reductions in the intensity of the Company's GHG emissions in order to meet the

[1] Refer to Staff Legal Bulletin No. 14K (Oct. 16, 2019) and Staff Legal Bulletin Nos. 14J, 14E and 14C, which all state that the Staff will consider both the resolved clause and the supporting statement when analyzing a proposal for which exclusion is sought under Rule 14a-8(i)(7).

[2] *See* Air Products and Chemicals, Inc., *Air Products Announces "Third by '30" CO_2 Emissions Reduction Goal Aligned to its Business Strategy, Accelerating Growth Opportunities and Higher Purpose* (Sept. 15, 2020) ("This ambitious goal is totally aligned with our business strategy. Key drivers toward our goal include carbon capture projects; low-carbon and carbon-free projects; operational excellence; and increased use of renewable energy."), *available at* https://www.airproducts.com/company/news-center/2020/09/0915-air-products-third-by-30-co2-emissions-reduction-goal.

Company's environmental target.[3] The development of the rigorous efficiency-based target and its close calibration with the Company's growth strategy, in lieu of the absolute targets favored by the Proposal, illustrates that the selection of such targets is a fundamental business decision by the Company.[4] Given the close connection of such targets with the Company's strategic focus on large-scale projects, the decision regarding the specific nature of a Company's GHG target is a matter that is impracticable for shareholders to address at an annual meeting. Furthermore, the choice between an intensity-based target and targets based on an absolute reduction in GHG levels does not implicate a significant social policy, as both targets are focused on obtaining the similar results but by different means.

The Staff also has permitted exclusion under the ordinary business prong of Rule 14a-8(i)(7) of proposals that requested adoption of quantitative targets or goals relating to renewable energy usage or energy efficiency improvements to spur reductions in GHG emissions. *See Rite Aid Corporation* (Apr. 17, 2018) (permitting exclusion of a proposal that concerned the feasibility of adopting quantitative, company-wide goals for increasing energy efficiency and use of renewable energy); *Gilead Sciences, Inc.* (Feb. 15, 2018) (same); *The TJX Companies, Inc.* (Mar. 8, 2016) (permitting exclusion of a proposal that requested the adoption of company-wide quantitative targets to increase renewable energy sourcing and production); *CVS Health Corporation* (Mar. 8, 2016) (same). In each of *Rite Aid*, *Gilead Sciences*, *TJX* and *CVS Health*, the proposal's request for the company to set quantitative, company-wide energy efficiency and renewable energy sourcing targets was spurred by the stated goal of reducing GHG emissions. The *Rite Aid*, *Gilead Sciences*, *TJX* and *CVS Health* proposals sought to use energy efficiency and renewable energy targets as a way to effect company-wide GHG emissions reductions. The Proposal similarly requests that the Company adopt "quantitative targets to increase sourcing of renewable energy [and] energy efficiency" as part of setting emission reduction targets. This invocation of renewable energy and energy efficiency, in the context of setting GHG emission reduction targets, indicates that the scope of the Proposal includes the Company's management of its renewable energy usage and energy efficiency, which the Staff has found to be ordinary business operations.[5] Following *Rite Aid*, *Gilead Sciences*, *TJX* and *CVS Health*, the Proposal should be excluded under Rule 14a-8(i)(7).

The Proposal also encompasses the Company's products and operations, which the Staff has long-recognized as relating to ordinary business. The supporting statement recommends that management increase "production of green hydrogen" and commit to reducing or mitigating "local community health impacts" from Company emissions when assessing what

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[3] *See* note 11, *infra*, and accompanying text.

[4] The setting of targets relating to ordinary business matters is itself an ordinary business matter. The Staff has granted relief under Rule 14a-7(i)(7) in the executive compensation context where proposals have sought to modify or amend executive compensation programs in order to indirectly influence the company's ordinary business operations. *See AT&T Inc.* (Jan. 29, 2019) (proposal requesting the inclusion of a debt rating metric in incentive compensation calculations was excludable as it focused on the ordinary business matter of managing existing debt); *Delta Air Lines, Inc.* (Mar. 27, 2012) (proposal requesting that the board prohibit incentive compensation payments to executive officers until the company funded certain pilot retirement accounts was excludable as it focused on the ordinary business matter of employee benefits).

[5] The Staff has previously granted relief under Rule 14a-8(i)(7) for a proposal that requested that a company diversify its "energy resources to include increased energy efficiency and renewable energy resources." *See FirstEnergy Corp.* (Mar. 8, 2013); *see also MGE First Energy, Inc.* (Mar. 14, 2019) (requesting a report describing how the company could eliminate coal and move to 100% renewable energy by 2050).

emission reduction targets to set. The Company is a world-leading hydrogen supplier and offers liquid hydrogen and compressed hydrogen gas for sale in a variety of purities and various modes of production and supply around the world. The Proposal's call for an increase in "production of green hydrogen" relates specifically to the volume and manner of production of that product. This request disregards the Company's substantial investments in both green hydrogen (hydrogen produced using electricity generated from renewable sources) and blue hydrogen (hydrogen produced from traditional hydrocarbons with permanent capture and sequestration of at least 95% of resulting CO_2 emissions). Both types of projects will result in substantial reductions of the Company's greenhouse gas emissions and those from the Company's value chain, while also driving the global transition toward net zero emissions. The Proposal's instruction would have the Company pursue one, more costly method of producing hydrogen over the other, irrespective of market demand, when both blue and green hydrogen will support energy transition and drive substantial reductions in GHG emissions by the Company's customers.[6] The Staff has long held the position that the products a company offers for sale and their method of production are squarely ordinary business matters and a proposal that focuses on such products is excludable under Rule 14a-8(i)(7). *See PPG Industries Inc.* (Feb. 26, 2015) (permitting exclusion of a proposal requesting a report on options for policies and practices to eliminate the use of lead in paint and coatings); *Exxon Mobil Corporation* (Mar. 6, 2012) (permitting exclusion of a proposal concerning economic challenges associated with production of oil from Canadian oil sands); *Dominion Resources, Inc.* (Feb. 22, 2011) (permitting exclusion of a proposal that requested the company offer an electricity product generated from 100% renewable energy); *Pepco Holdings, Inc.* (Feb. 18, 2011) (permitting exclusion of a proposal urging the company to pursue the market for solar technology); *Marriott International Inc.* (Mar, 17, 2010) (permitting exclusion of a proposal to install and test low-flow shower heads because it required the use of specific technologies).

Finally, the Proposal's reference to assessing the community impact of Company operations similarly implicates its ordinary business operations. The Staff has permitted exclusion under Rule 14a-8(i)(7) for proposals that concerned "community impacts" and "societal consequences" of company operations. *See Chevron Corporation* (Mar. 30, 2021) (requesting an independent report analyzing how the company's "policies, practices, and the impacts of its business" perpetuate racial injustice and inflict harm on communities of color); *Amazon.com, Inc.* (Mar. 28, 2019) (proposal requesting an analysis of the community impacts of the company's operations with a consideration of near and long-term local economic and social outcomes); *see also The TJX Companies, Inc.* (Apr. 9, 2021) (proposal requesting analysis of whether the company was inadvertently supporting systemic racism through supply chain prison labor); *The Home Depot, Inc.* (Mar. 17, 2021) (proposal requesting report analyzing whether company advertising policies contribute to violation of civil rights or human rights, including the spread of different forms of hate speech); *Amazon.com, Inc.* (Mar. 28, 2019) (proposal requesting a review of corporate policies and procedures to assess the potential societal consequences of the company's products and services). As the Proposal encompasses these facets of the Company's ordinary business operations, products offered for sale and the community impact of its business, in addition to renewable energy usage and energy efficiency management, the Proposal should be excluded under Rule 14a-8(i)(7).

[6] As discussed above, both green hydrogen and blue hydrogen are produced in a manner that results in substantial reductions in CO_2 emissions, reducing our direct emissions and driving reduced emissions throughout our value chain as we support energy transformation.

C. The Proposal Seeks to Micromanage the Company by Imposing Specific Methods for Implementing Complex Policies.

Rule 14a-8(i)(7) also permits exclusion of a proposal that "seeks to 'micromanage' 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." *Amendments to Rules on Shareholder Proposals*, SEC Rel. No. 34-40018 (May 21, 1998). The Commission has stated that the exclusion of a proposal under Rule 14a-8(i)(7) on the grounds that the proposal micromanages a company "may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *Id*.

The Staff has subsequently provided additional guidance on the scope and meaning of micromanagement under Rule 14a-8(i)(7). As noted in Staff Legal Bulletin 14K, the Staff looks "to whether the proposal seeks intricate detail or imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board." The Staff further explained that "if the method or strategy for implementing the action requested by the proposal is overly prescriptive, thereby potentially limiting the judgment and discretion of the board and management, the proposal may be viewed as micromanaging the company."[7] Consideration of the language of the supporting statement is also an element in the Staff's micromanagement analysis. As noted in Staff Legal Bulletin 14K, "if a supporting statement modifies or re-focuses the intent of the resolved clause, or effectively requires some action in order to achieve the proposal's central purpose as set forth in the resolved clause, [the Staff takes] that into account in determining whether the proposal seeks to micromanage the company."

The Proposal requests that the Company set emission reduction targets covering the Company's Scope 1, 2 and 3 GHG emissions. The Proposal would replace management's balancing of many factors that direct the Company's decisions on how to offer its products, services and solutions and manage its operations in an environmentally sustainable manner. These decisions are complex in nature and shareholders as a group are not in a position to make an informed decision as to the specific GHG emissions targets that the Company should pursue in alignment with the Company's growth strategy. As described above, the Company already 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. This includes by setting specific quantitative, Company-wide objectives relating to GHG emissions and providing extensive disclosure regarding these objectives and the Company's progress toward their achievement. Identifying, assessing and implementing policies and procedures to 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

[7] The micromanagement analysis rests on an evaluation of the manner in which a proposal seeks to address the subject matter raised and is independent of whether the proposal is cast as precatory. The Staff noted in Staff Legal Bulletin 14K that "the precatory nature of a proposal does not bear on the degree to which a proposal micromanages" and exclusion under Rule 14a-8(i)(7) may be appropriate regardless of the precatory nature of the proposal in question.

requirements. The allocation of resources among these different strategies requires that complex business decisions and judgments 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 and to facilitate energy transition away from hydrocarbons. The Company carefully monitors and discloses its GHG emissions as well as the savings it delivers to customers in order to assess the true environmental impact of its operations (in 2020 the Company's technologies enabled customers to avoid the equivalent of 72 million metric tons of CO_2 emissions, which was three times the Company's own direct and indirect CO_2 emissions). 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 relating to GHG emissions, which in turn would significantly affect the Company's long-term growth strategy. Simply put, these considerations are too complex for shareholders to exercise direct oversight of them through the Commission's shareholder proposal process.

The Staff has recently permitted the exclusion of proposals under Rule 14a-8(i)(7) that have requested that a company set GHG emission reduction targets. The Staff has found that proposals that requested short, medium and long-term GHG reduction targets micromanaged, and were excludable under Rule 14a-8(i)(7), because they sought to impose specific methods for implementing complex policies. *See J.B. Hunt Transport Services, Inc. (Feb. 14, 2019)* (permitting exclusion of a proposal requesting adoption of company-wide, quantitative, targets for reducing GHG emissions)*; EOG Resources, Inc. (Feb. 26, 2018, recon. denied Mar. 12, 2018) (same); Deere & Co.* (permitting exclusion of a proposal that requested the company achieve net-zero emissions of greenhouse gases). The Proposal implicates a similar or even greater degree of complexity than these proposals. The Proposal similarly requests consideration of short, medium and long-term GHG reduction targets, but further requests consideration of quantitative sourcing and production targets. The Proposal effectively requests that the Company discard its rigorous intensity-focused emission target that is carefully calibrated with its business strategy with absolute reduction targets, which do not account for the Company's strategy and the critical role that its products, in particular hydrogen, will have in the global energy transition. Furthermore, due to misalignment between the Proposal and the Company's operations, it is possible that the reduction targets requested by the Proposal could be less rigorous than the intensity-based target the Company has selected.

As noted above, the Company has already developed a rigorous energy efficiency target that is intertwined with its focused and deliberately constructed growth strategy. Given the close connection between this target with the Company's business model and strategy, the Proposal's call for absolute targets in lieu of the target already set by management would impermissibly micromanage the Company by supplanting the judgment of management and the board. The Staff has recognized that it is impracticable for shareholders to address such complex determinations and has permitted the exclusion of similar proposals on micromanagement grounds. *See Exxon Mobil Corporation* (Apr. 2, 2019) (permitting exclusion of a proposal that requested disclosure of short, medium and long-term greenhouse gas targets aligned with the greenhouse gas reduction goals established by the Paris Climate Agreement); *Devon Energy Corporation* (Mar. 4, 2019) (same); *The Goldman Sachs Group, Inc.* (Mar. 12, 2019) (permitting exclusion of a proposal that requested the company to reduce the carbon footprint of its loan and investment portfolios in alignment with the goals of the 2015 Paris Climate Agreement); *Wells Fargo & Company* (Mar. 5, 2019) (same). The Proposal requests that the

Company discard its rigorous intensity-focused emission target that is carefully calibrated with its business strategy with reduction targets that do not take into account the Company's strategy or the critical role that its products, in particular hydrogen, will have in the global energy transition. These factors illustrate the nature of the Proposal as seeking to impose specific methods to implement complex policies and, accordingly, should result in the Proposal being excluded under the micromanagement prong of Rule 14a-8(i)(7).

The supporting statement's level of detail regarding the development and calibration of GHG emission reduction target also would impermissibly micromanage the Company. This distinguishes the Proposal from recent proposals where the Staff did not support exclusion under Rule 14a-8(i)(7). *See ConocoPhillips Company* (Mar. 19, 2021); *Occidental Petroleum Corporation* (Mar. 19, 2021); *Chevron Corporation* (Mar. 30, 2021). While each of these proposals requested that the company set GHG emissions reduction targets, the proposals did not discuss how the companies should develop the requested targets. For example, the *Occidental* proposal specifically stated that the company had "maximum flexibility" in developing the requested targets. Similarly, the *Chevron* proposal requested GHG emissions reductions but also gave wide latitude to management to "set and vary [its] strategy or take any action which [it] believes . . . would contribute to reducing GHG emissions." The Proposal's discussion of how to develop targets stands in stark contrast with the *ConocoPhillips*, *Occidental* and *Chevron* proposals. The requests outlined in the supporting statement make it clear that the Proposal is focused not only on GHG emissions reduction targets, but also on a litany of factors that would interfere with management's ability to make day-to-day business and operational decisions on behalf of the Company. These decisions, including those relating to the development of GHG emissions reduction targets, are properly within the purview of management, subject to board oversight, and when presented individually have been excluded by the Staff on grounds of micromanagement in the letters cited in the preceding paragraph and in *The TJX Companies, Inc.* (Apr. 9, 2021) (permitting exclusion of a proposal requesting analysis of whether the company was inadvertently supporting systemic racism through undetected supply chain prison labor) and *Chevron Corporation* (Mar. 30, 2021) (permitting exclusion of a proposal requesting analysis of how the company's "policies, practices, and the impacts of its business" perpetuate racial injustice and inflict harm on communities of color).

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, facilitate corporate growth and lead the global transition to cleaner sources of energy, most notably hydrogen. The Proposal disregards this nuanced, highly deliberate process and seeks to impose a one-size-fits-all approach toward addressing GHG emissions. As a result, the Proposal should be excluded under Rule 14a-8(i)(7).

II. The Proposal Should be Excluded Under Rule 14a-8(i)(10) because the Company Has Substantially Implemented the Proposal.

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

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if "the company has already substantially implemented the proposal." The Commission has noted that the purpose of this exclusion is "to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." *Proposed Amendments to*

Rule 14a-8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, SEC Rel. 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 allowing exclusion only where a company's implementation efforts had "fully" effectuated the proposal. Based on this approach, over nearly four decades the Staff has permitted the exclusion of proposals that have been "substantially implemented" in circumstances where the company can demonstrate that it has already taken action to address the essential objective of the proposal and that its policies, practices and procedures compare favorably with the guidelines of the Proposal. *See, e.g., Texaco, Inc.* (Mar. 28, 1991).

In light of these statements from the Commission regarding Rule 14a-8(i)(10)'s emphasis on substantial, not uniform implementation, the Staff has permitted the exclusion of proposals where a company's actions satisfy the proposal's essential objectives or where a company's existing policies, practices, and procedures are similar in comparison to the proposal's request. The Staff has stated that where a company's actions address the proposal's "essential objective," the company has substantially implemented the proposal. The Staff has further determined on numerous instances that a company has substantially implemented a proposal where its policies, practices, procedures or public disclosures "compare favorably with the guidelines of the proposal." *See e.g. Anthem, Inc.* (Mar. 19, 2018) (permitting exclusion of a proposal that requested a sustainability report describing the company's ESG performance, including GHG reduction targets, and goals where the company disclosed such information in a sustainability report and on its website). When determining which company documents or disclosures substantially implement a proposal, the Staff has long held that multiple company policies, reports and other disclosures can collectively act to substantially implement a proposal.[8]

The Staff has consistently concurred in the exclusion of shareholder proposals where a company's actions regarding GHG emissions addressed the proposal's essential objective and therefore substantially implemented the proposal. *See 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); *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); *see also 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).

[8] *See e.g. Apple Inc.* (Dec. 17, 2020) (permitting the exclusion of a proposal where the company cited to 11 distinct reports, policy documents and webpages to show that it substantially implemented a proposal that requested a report on the company's management systems and processes for implementing its human rights policy commitments); *see also Pilgrim's Pride Corporation* (Mar. 23, 2021) (permitting exclusion of a proposal where the company cited its periodic reports, sustainability report, supplier code of conduct, corporate website and press release).

B. The Company's Emissions Target and Plans to Achieve it Substantially Implement the Proposal

The Proposal requests that the Company set "emission reduction targets covering the Company's full value chain (Scope 1, 2 and 3) GHG emissions." The Proposal is concerned with the risks and opportunities associated with climate change and further recommends that management consider (i) adopting short, medium, and long-term GHG emissions reduction targets, (ii) adopting "quantitative targets to increase sourcing of renewable energy [and] energy efficiency," (iii) increase "production of green hydrogen" and (iv) commit to reducing or mitigating "local community health impacts" from the Company's emissions. The Company's existing climate change mitigation strategy, consisting of a highly ambitious GHG emissions intensity target and strategy for achieving it, coupled with the Company's product and service offerings and emphasis on transformative projects to help customers reduce their own GHG emissions and drive global energy transition away from hydrocarbons addresses the essential objective of the Proposal: mitigating the effects of climate change through the reduction of GHG emissions across the Company's value chain. Accordingly, the Company has substantially implemented the Proposal, and the Proposal should therefore be excluded under Rule 14a-8(i)(10).

The Company has established a rigorous, quantitative, time-bound, Company-wide target regarding GHG emissions and has increased its use of renewable energy to this end. The Company has disclosed this target through a variety of means and annually discloses its work toward the achievement of this objective, including quantitative disclosures regarding increased use of renewable energy. In addition, the Company has incorporated its GHG emissions target and benchmarks toward its achievement into its senior credit facility, demonstrating its financial commitment to achieving this target. The Company currently provides significant information regarding its climate change mitigation strategy, including steps taken to increase its use of renewable energy, measures aimed at reducing GHG emissions and how the Company is addressing climate-related risks. Disclosure regarding these efforts can be found in various publicly available reports such as the Company's 2021 Sustainability Report (the "**Sustainability Report**"),[9] which is largely focused on the use of resources and reducing the Company's environmental footprint, and the Company's 2021 CDP Climate Change Questionnaire response[10], which provides detailed information relating to climate change and GHG use in response to a global reporting framework. These disclosures substantially implement the essential objective of the Proposal because they provide extensive detail regarding the Company's climate change mitigation strategy, the Company-wide target related to combating climate change and reducing GHG emissions and the Company's increased use of renewable energy.

The Company's sustainability objectives, as outlined in the Sustainability Report, include an ambitious target for reducing the intensity of the Company's GHG emissions. This target includes reducing CO_2 equivalent emissions intensity by one-third by 2030 and annually

[9] Air Products and Chemicals, Inc., 2021 Sustainability Report, a*vailable at* https://www.airproducts.com/company/sustainability/sustainability-report.

[10] Air Products and Chemicals, Inc., CDP Climate Change Questionnaire 2021, available at https://www.airproducts.com/company/sustainability.

increasing the amount of such emissions avoided by customers through their use of Company products. The Company plans to achieve this target "through five mechanisms: executing carbon capture projects, producing carbon-free hydrogen, executing low-carbon projects, continuing to improve our operations, and increasing our use of renewable energy."[11] The Company is currently executing on this strategy. In July 2020 the Company announced an agreement to construct a $5 billion, world-scale green hydrogen based ammonia production facility in Saudi Arabia, which is the first announced green hydrogen production and distribution system that will be run at gigawatt scale.[12] In June 2021 the Company announced a multi-billion dollar investment to construct a net-zero hydrogen energy complex in Edmonton, Alberta, which will produce blue hydrogen and utilize hydrogen-fueled electricity to offset the remaining CO2 emissions in order operate on a net-zero basis.[13] The Company is actively evaluating other green and blue hydrogen and carbon capture and sequestration projects and expects to announce additional such projects in the near future. The Company also recently announced an agreement with Cummins Inc. to accelerate hydrogen fuel cell powertrains for heavy duty trucks and that, as part of this arrangement, Air Products will convert its global fleet of approximately 2,000 trucks to hydrogen fuel cell zero-emission vehicles.[14] These initiatives and other achievements have been recognized by the accolades the Company has received from various third parties for its commitment to sustainability.[15]

The Company's sustainability targets build on targets the Company set initially in 2016 and the Company's performance in meeting many of those objectives through its initial five-year measurement period, including reducing GHG emissions intensity by 2.6% (surpassing a target of 2%), shows that the Company's commitment to and strategy for climate change mitigation and GHG emissions reductions is robust, transparent and successful by many measures. The Company publicly reports on its Scope 1, 2 and 3 GHG emissions and, as noted in the Sustainability Report, was successful in reducing overall emissions in 2020: the Company's Scope 1 GHG emissions decreased 10% from the prior year, Scope 2 emissions decreased 8% over the same period, while Scope 3 emissions increased by 1.2%. As has been the case in the past, the Company's 2020 CO_2 emissions data was externally verified by WSP, a recognized environmental management consultant. The Company's 2020 carbon productivity results show that efficiency and distribution improvements contributed to sizeable progress in avoided CO_2 emissions using a 2015 baseline year. Over 1.3 million metric tons of CO_2e Scope 1 and 2

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[11] *See* Sustainability Report, *supra* note 9, at 13.

[12] Air Products and Chemicals, Inc., *Air Products, ACWA Power and NEOM Sign Agreement for $5 Billion Production Facility in NEOM Powered by Renewable Energy for Production and Export of Green Hydrogen to Global Markets* (July 7, 2020), *available at* https://www.airproducts.com/news-center/2020/07/0707-air-products-agreement-for-green-ammonia-production-facility-for-export-to-hydrogen-market.

[13] Air Products and Chemicals, Inc., *Air Products Announces Multi-Billion Dollar Net-Zero Hydrogen Energy Complex in Edmonton, Alberta, Canada* (June 9, 2021), *available at* https://www.airproducts.com/news-center/2021/06/0609-air-products-net-zero-hydrogen-energy-complex-in-edmonton-alberta-canada.

[14] Air Products and Chemicals, Inc., *Air Products and Cummins to Accelerate Development and Deployment of Hydrogen Fuel Cell Trucks* (July 26, 2021), *available at* https://www.airproducts.com/news-center/2021/07/0726-air-products-and-cummins-to-accelerate-development-and-deployment-of-hydrogen-fuel-cell-trucks.

[15] For example, Barron's ranked the Company 13th on its 2021 list of 100 Most Sustainable Companies, EcoVadis granted the Company a gold medal for Corporate Social Responsibility, ISS-oekom recognized the Company as a top performer, with a "prime" ranking, the Company was named on the Dow Jones Sustainability North America Index for the 11th consecutive year and Newsweek's list of America's Most Responsible Companies for 2021 included the Company as among the leaders in the Materials industry. For additional information regarding these and other accolades, please refer to the Company's website.

emissions were avoided through efficiency improvements between 2015-2020 and over 80,000 metric tons of CO_2 Scope 1 emissions were avoided through distribution improvements over the same period. These results indicate that the Company has and will continue to actively maintain a strategy that promotes the reduction of GHG emissions as part of a wider climate change mitigation strategy, and this strategy substantially implements the Proposal's essential objective. Furthermore, as disclosed in the Sustainability Report the Company expects to achieve substantial progress toward its CO_2 intensity target as new projects, including those listed above, come on-stream later this decade.

As noted above, the Company is also committed to enabling customers to enhance their sustainability and GHG emissions goals. Many products that the Company produces or supplies help its customers avoid CO_2 emissions that they and their own customers would otherwise emit if not for those products. For example, as the world's largest supplier of hydrogen, the Company provides hydrogen to petroleum refiners to lower sulfur content and enable the production of cleaner-burning gasoline and diesel fuels, significantly reducing vehicle emissions by people around the world. The Company is further committed to utilizing innovation across product lines to support customers' sustainability and GHG emissions reduction goals. Examples of the Company's innovative technologies being deployed to provide more sustainable energy solutions to customers include:

- Industrial Gases: Improving the design and operations of facilities while collaborating with customers to meet their energy and environmental goals.
- Liquefied Natural Gas Technology and Equipment: Improving the efficiency of LNG liquefaction process technologies and equipment that are used globally to supply cleaner burning natural gas.
- Gasification: Improving carbon conversion efficiency and scalability in gasification by enhancing the designs of injectors, burners and reactors.
- Carbon Capture: Developing and implementing CO_2 vacuum swing absorption process to recover CO_2 prior to capture.
- Hydrogen for Mobility and Energy Transition: Expanding technologies to increase hydrogen availability, evaluating dry reforming to produce lower carbon hydrogen and scaling electrolyzers to produce green hydrogen.

The Company's efforts in these areas yielded 72 million metric tons of customer-avoided CO_2e emissions in 2020, or three times the Company's own CO_2 emissions.

These efforts show that the Company's existing strategy for reducing GHG emissions and tackling the economic and societal impacts of climate change not only is focused on meeting the Company's internal target but also directly aids the GHG emission reduction goals of customers around the world. The Company's gases and technologies contribute to a positive, circular economy by enabling the use, or recycling of, resources and reducing emissions to the environment. The Company's efforts already satisfy the Proposal's climate change mitigation and GHG emissions objectives. Given the Company's unique position as a producer and supplier of CO_2 decreasing products and services, implementation of the Proposal would upset this complex and compounding climate strategy that is focused on delivering beneficial climate change results both for the Company and for its customers and other stakeholders across the world. Given that the Company's strategy and efforts substantially implement the essential objective of the Proposal, the Proposal should be excluded under Rule 14a-8(i)(10).

CONCLUSION

Based upon the foregoing analysis, the Company respectfully requests that the Staff concur that the Company may exclude the Proposal from the Proxy Materials.

* * * * *

The Company is submitting this request at least 80 days before the estimated December 15, 2021 mailing date of the Proxy Materials. The Company anticipates that the Proxy Materials will be finalized for distribution on or about December 7, 2021. Accordingly, the Company would appreciate receiving the Staff's response to this no-action request by December 1, 2021.

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 I can be of any further assistance in this matter, please do not hesitate to call me at (610) 481-4880.

Sincerely,

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

Enclosure

cc: Laura Campos
The Nathan Cummings Foundation

Exhibit A

Shareholder Proposal from The Nathan Cummings Foundation

THE NATHAN CUMMINGS FOUNDATION

June 25, 2021

Sean D. Major
Executive Vice President, General Counsel & Secretary
Air Products and Chemicals, Inc.
7201 Hamilton Boulevard
Allentown, PA 18195-1501 9

Dear Mr. Major,

The Nathan Cummings Foundation continues to believe that the way in which companies approach environmental, social and governance issues has important implications for long-term shareholder value. Given the carbon footprint of Air Products' operations and products, we are particularly concerned about what we see as a lack of clear and aggressive absolute targets for managing Air Products' impacts on the climate.

It is with these considerations 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 $25,000 worth of shares of Air Products and Chemicals, Inc. stock. Verification of this ownership, provided by our custodian, Amalgamated Bank, is included herewith. We have continuously held over $25,000 worth of these shares of Air Products & Chemicals, Inc. stock for more than one year and will continue to hold these shares through the shareholder meeting.

If you have any questions or concerns about the Foundation's submission of this resolution, please contact me at (917) 691-9015. We ask that any written correspondence about this proposal be sent to our offices at 120 Wall Street -26th Floor, New York, NY 10005 and by email to laura.campos@nathancummings.org.

Sincerely,

Laura Campos

Director, Corporate & Political Accountability

Whereas:

In 2018, the Intergovernmental Panel on Climate Change advised that net greenhouse gas (GHG) emissions must fall 45 percent by 2030 and reach net zero by 2050 to limit warming below 1.5°C. This would prevent the worst consequences of climate change.

The Fourth National Climate Assessment (2018) reports that with continued growth in emissions, annual U.S. economic losses could reach "hundreds of billions of dollars by 2100."

A warming climate is associated with systemic portfolio risks to investors, including supply chain dislocations, reduced resource availability, environmental degradation to communities where companies operate, lost productivity, commodity price volatility, infrastructure damage and disruptions from severe weather events, among other things.

While Air Products has adopted a goal to reduce CO2 emissions intensity (not absolute emissions) one-third by 2030, this does guarantee that total emissions will fall to match the ambition of the Paris Agreement nor does it cover scope 3 emissions. We believe more ambitious action is necessary to address the Company's full climate impact and the transition risks associated with a global shift away from a fossil fuel-based economy.

Peer companies have begun to set more ambitious climate, renewable energy and energy efficiency goals. Air Liquide and Linde have committed to set science-based greenhouse gas targets and Air Liquide is committed to reducing absolute emissions 33% by 2035. Linde will invest more than one-third of annual R&D in decarbonization by 2028. BASF and Air Liquide have pledged to be carbon neutral by 2050.

Ramping up the scale, pace and rigor of its climate-related initiatives could secure a leadership role for Air Products that unlocks opportunities for growth as customers increasingly demand environmental accountability. It will also help prepare the Company for future climate-related regulations.

We believe that setting emissions reduction targets for all GHG emissions (Scope 1, 2 and 3) is the best way for Air Products to address these risks and opportunities.

Resolved:

Shareholders request that Air Products address the risks and opportunities presented by climate change and the global transition toward net zero emissions by setting emission reduction targets covering the Company's full value chain (Scope 1, 2 and 3) GHG emissions.

Supporting Statement:

In assessing what targets to set, we recommend, at management's discretion, consideration of the following:

- Adopting short, medium and long-term GHG emissions reduction targets taking into consideration approaches used by advisory groups such the Science Based Targets initiative (through which over 1,500 companies have set or committed to set science-based GHG reduction targets).
- Adopting quantitative targets to increase sourcing of renewable energy, energy efficiency and production of green hydrogen.
- Assessing the disparate impacts of the Company's climate change contributions on communities of color and committing to reduce or mitigate local community health impacts from the cumulative emissions generated from its facilities.

amalgamated bank

HOWARD N. HANDWERKER
First Vice President

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howardhandwerker@amalgamatedbank.com

June 25, 2021

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

Dear Mr. Major,

This letter will verify that as of June 25, 2021, the Nathan Cummings Foundation held 184 shares of Air Products and Chemicals, Inc. common stock. It has continuously held more than $25,000.00 worth of these shares for at least one year and intends to continue to hold at least $25,000.00 worth of these shares at the time of your next annual meeting.

The Amalgamated Bank serves as custodian and record holder for the Nathan Cummings Foundation. The above-mentioned shares are registered in a nominee name of the Amalgamated Bank. The shares are held by the Bank through DTC Account # 2352.

Sincerely,

Investment Management Division
275 Seventh Avenue, 9th Floor
New York, NY 10001
amalgamatedbank.com