

where DuPont owns (directly or indirectly) at least 50% of the joint venture and another joint venturer owns at least 10% of the joint venture. Pursuant to compliance procedures, the applicants bond trading personnel must check these lists prior to any new purchases of such bonds for the Plans. The lists must be updated monthly.

8. In summary, the applicant represents that the proposed exemption will satisfy the criteria of section 408(a) of the Act because:

(a) The purchase of the Bonds by the Plans was a one-time cash transaction;

(b) The Plans' purchased the Bonds at their current fair market value from an unrelated party, based on prices determined by a reputable, independent third party market sources;

(c) The Bonds were sold by the Plans on October 17, 2001 for \$4,234,531 at a profit of \$185,638 for the Plans, and;

(d) The purchase of the Bonds was not part of an agreement, arrangement or understanding designed to benefit ConAgra or any other party in interest with respect to the Plans; and

(e) The transaction represented less than 1% of each Plan's total assets.

FOR FURTHER INFORMATION CONTACT:

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DuPont Capital Management Corporation (DCMC), Located in Wilmington, DE

[Application Nos. D-11119, 11120]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the past extension of credit from the CONSOL Inc. Employee Retirement Plan and the CONSOL Inc. Investment Plan for Salaried Plans (collectively, the Plans) to Conoco Inc. (Conoco), a party in interest with respect to the Plans, as a result of the holding by the Plans of certain corporate debt securities (the Bonds) issued by Conoco, for the period from December 29, 1999 through August 16, 2001, provided the following conditions were satisfied:

(a) The purchase of the Bonds by the Plans was a one-time transaction for cash;

(b) The Plans paid no more than the current fair market value for the Bonds at the time of the transaction, as determined by reputable, independent, third party market sources;

(c) The Bonds were sold on August 16, 2001 for \$816,641 at a profit of \$61,858 for the Plans;

(d) The purchase of the Bonds was not part of an agreement, arrangement or understanding designed to benefit Conoco or any other party in interest with respect to the Plans; and

(e) The transaction represented less than 1% of each Plan's total assets.

Effective Date of Exemption

The proposed exemption, if granted, will be effective for the period from December 29, 1999 (the date of the acquisition of the Bonds by the Plans) until August 16, 2001 (the date the Bonds were sold).

Summary of Facts and Representations

1. The applicant is DuPont Capital Management Corporation (DCMC), a wholly owned subsidiary of E.I. duPont de Nemours and Company (DuPont), and organized as a Delaware corporation with its principal office in Wilmington, Delaware. As of December 31, 2001, DCMC had total assets under its management with an aggregate market value of approximately \$19.3 billion. DCMC is an investment advisor, registered under the Investment Advisers Act of 1940, for the assets of the DuPont Pension Trust Fund (the Trust), which holds the assets of the Plans. DCMC has managed the assets of the Trust since July 1997. The aggregate fair market value of the Trust's assets is in excess of \$13 billion.

2. CONSOL Energy Inc., is the plan sponsor of the CONSOL Inc. Employee Retirement Plan and the CONSOL Inc. Investment Plan for Salaried Employees. The applicant represents that there are currently 7,049 participants and beneficiaries in the CONSOL Inc. Employee Retirement Plan, and 7,509 participants and beneficiaries in the CONSOL Inc. Investment Plan for Salaried Employees.

3. The applicant represents that DCMC provides investment management services to various employee benefit plans, including plans sponsored by DuPont and its subsidiaries [(i.e., Pioneer Hi-Bred International, Inc. and Protein Technologies International) and affiliates (collectively, the DuPont Group)], with respect to a spectrum of investments consisting primarily of

domestic and international equities, fixed-income securities, and various alternative investments (including real estate, venture capital, and commodity futures). DCMC utilizes value-based investment strategies with the objective of achieving maximum return consistent with levels of risk suitable to each Plan.

CONSOL, Inc. (CONSOL) was a member of the DuPont Group prior to November 5, 1998. At that time, the Trust held assets of the Plans. On November 5, 1998, DuPont divested substantially all of its holdings in CONSOL. Thus, DCMC is no longer an affiliate of the employer maintaining the Plans. However, DCMC continues to manage the assets of the Plans.¹⁴

4. CONSOL Energy Inc. and Conoco participate in two 50/50 joint ventures known as the Cardinal States Gathering Partnership and the Pocahontas Gas Partnership as a result of which Conoco is a party in interest with respect to the Plans. In this regard, each of the joint ventures is a party in interest with respect to the Plans under section 3(14)(G) of the Act, as an entity 50% owned by CONSOL (which is a party in interest with respect to such Plan under section 3(14)(C) of the Act). Conoco is a party in interest with respect to the Plans under section 3(14)(I) because it is a 10% or more joint venturer of each of the joint ventures. According to the applicant, Conoco is a Fortune 500 company and CONSOL had sales in excess of \$2 billion for the year 2000. Additionally, the value of CONSOL's aggregate interest in the joint ventures represents less than 1% of CONSOL's total net value.

5. According to the applicant, as a result of the inadvertent failure to identify Conoco as a party in interest with respect to the Plans,¹⁵ DCMC

¹⁴ See Prohibited Transaction (PTE) 2001-05, 66 FR 7789 (January 25, 2001), which provides relief for transactions between parties in interest and certain former DuPont related employee benefit plans whose assets are managed by DCMC. In this regard, PTE 2001-05 was not effective at the time of the subject transactions to which this proposed exemption relates.

¹⁵ In this proposed exemption, the Department is providing no opinion as to whether the Plans' acquisition and holding of the Bonds violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act other than section 406(a). In this regard, the applicant has not requested, nor is the Department providing, any relief from section 406(b) of the Act in connection with the subject transactions. The Department notes that section 406(b) of the Act provides, in pertinent part, that a fiduciary of a plan shall not deal with the assets of the plan in his own interest or for his own account, nor act on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. In addition, section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the