

Toxics-, Pesticide-related shareholder resolutions withdrawn as companies engage

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Stakeholders say more and more companies are willing to engage with shareholders on environmental, social and governance issues, which is increasingly leading to the withdrawal of pesticide- and toxic chemical-specific resolutions before they reach a vote.

According to information gleaned from the Investor Environmental Health Network and the Interfaith Center on Corporate Responsibility, in the 2009 proxy season running from March to June, only four out of 17 company shareholder resolutions specifically targeting toxics or pesticides reached a vote — the third consecutive year the number has dropped.

Ten of the 17 resolutions in 2009 were withdrawn by the filers after the companies agreed to constructive dialogue with shareholders or committed to address the issue of concern.

Companies targeted by these withdrawn resolutions include: Albemarle, General Electric, Kellogg, Kraft, Lowe's, Macy's, McDonald's and Whole Foods Market. Many of these resolutions requested a report on policy options to reduce the risks from toxic chemicals (see table, Page 13).

Michael Passoff, associate director of the Corporate Social Responsibility Program at the As You Sow Foundation, worked on resolutions requesting reports from both Kraft and McDonald's on company policies for using nanomaterials and the actions being taken to reduce their potentially harmful effects.

Both resolutions were withdrawn when the two companies showed a willingness to work with stakeholders to address the concerns regarding nano, Passoff told Pesticide & Toxic Chemical News. Shareholders are currently working with Kraft to increase disclosure on its activities related to nanomaterials, among other actions. McDonald's is working on developing a nanotechnology framework and educational workshop with stakeholders. Both companies say they don't use nanomaterials.

Passoff says companies have engaged with stakeholders for years, but the nature of the dialogue has changed, becoming more constructive. "Companies are starting to adopt a sustainability mindset," he said.

Richard Liroff, executive director of IEHN, echoes that sentiment.

"What we're beginning to see is the mainstreaming of sustainability concerns," he told PTCN. "There are companies out there that refuse to talk, but smart companies realize

stakeholders are important and can provide warning signs on issues that can blow up later."

For example, Liroff says IEHN saw the bisphenol A issue coming in 2005 and got in touch with Whole Foods Market. BPA had been on the "natural" grocery store chain's radar screen, but following a shareholder resolution, it pulled baby bottles and children's drinking cups made with BPA-containing plastic, and it issued a policy statement on helping customers avoid endocrine disruptors in products.

Tip of the iceberg

While sometimes the resolutions themselves compel companies to act or talk with shareholders on the appropriate way to move forward on certain issues, shareholder groups are actively in contact with companies, and resolutions are just the "tip of the iceberg," Liroff said.

For example, Liroff notes pro-environment investing firm Green Century Capital Management and shareholder advocacy group As You Sow Foundation sent letters to 20 publicly held food processing companies in 2008 and early 2009 asking them to identify the actions they are taking to address growing consumer and investor concerns regarding bisphenol A. Fourteen complied (see PTCN, April 27, Page 27).

According to Emily Stone, shareholder advocate at Green Century Capital Management, shareholders are moving more and more toward dialogue with companies, a trend also observed by **Conrad MacKerron, director of As You Sow's Corporate Social Responsibility Program.**

"Resolutions are more of a last resort," **MacKerron** told PTCN. "We'd rather use our limited resources to talk to management instead of drafting shareholder resolutions. The majority of our work is dialogue. We can always file down the road if our concerns aren't addressed."

Stone noted a shift away from resolutions may be due in part to some not making it through challenges filed with the Securities and Exchange Commission.

Companies may attempt to exclude a resolution from their proxy statements based on a number of criteria. A company provides this reasoning to the SEC, and the SEC either concurs or does not concur with the exclusion.

One such criterion allows a company to exclude a resolution proposal if it deals with a matter regarding a company's ordinary business operations. Companies argue that the products they choose to put on their shelves falls within their ordinary business operations, Stone said, so if a resolution says something about the products a business can sell, it can be excluded under the ordinary business criterion.

While acknowledging the number of pesticide and toxics resolutions being voted on may be decreasing, Liroff asserts the number of shareholder resolutions filed is holding steady. However, he noted the SEC challenges are something with which shareholder groups must grapple.

"The irony of ironies is that we can't ask what the risk to the business is," he said. "So we have to dance around it." And SEC's interpretation of the exclusion criteria is becoming increasingly stringent, Liroff said.

There are always a few resolutions thrown out by SEC every year (two toxic chemical resolutions got tossed out in 2009), but it can "play out in some crazy ways," he said.

Several years ago, a resolution was filed with Wal-Mart asking the company to take a look at the products it sells and adopt a safer chemicals policy, Liroff said. The company's counsel challenged the resolution on ordinary business grounds, and the SEC concurred.

But "at the very same time," Wal-Mart was beginning to develop its sustainability index, Liroff said. "Sometimes there can be a disconnect between the style of the corporate counsel office and what other offices are doing. Companies may not be well served by aggressive counsel."

As for the four resolutions in 2009 that did reach a vote, none garnered a majority. While it is not always the goal to win the proxy vote, but to bring a company to the table to discuss concerns, Liroff said he hasn't heard that three of the targeted companies — Avon, SanDisk or Danaher — are engaging with stakeholders.

Julie Frieder, senior sustainability analyst at Calvert Investments, the lead filer on the SanDisk resolution, which asked the company to prepare a sustainability report that includes goals to reduce the use of polyvinyl chloride, confirmed SanDisk hasn't expressed an interest in engaging with Calvert.

The three companies did not return calls for comment by press time.

The other resolution that made it to a vote in 2009 asked Bed, Bath & Beyond to create a sustainability report that includes strategies to address toxic chemicals in products. A company spokeswoman referred PTCN to the company's 2009 proxy statement that says Bed, Bath and Beyond has engaged and will continue to engage stakeholders, and is preparing a sustainability report that addresses the areas outlined in the resolution.

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