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HERCULES INC
Form DFAN14A
May 08, 2003

AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON MAY 8, 2003
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A INFORMATION
PROXY STATEMENT PURSUANT TO SECTION 14(a)
OF THE SECURITIES EXCHANGE ACT OF 1934
(AMENDMENT NO. __)

Filed by the Registrant []
Filed by a Party other than the Registrant [X]

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, For Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
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- Soliciting Material Pursuant to Rule 14a-12

HERCULES INCORPORATED
(Name of Registrant as Specified in Its Charter)

HERCULES SHAREHOLDERS' COMMITTEE FOR NEW MANAGEMENT
(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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- (3) Filing Party:
- (4) Date Filed:

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[The following material was provided to Institutional Shareholder Services in connection with a meeting on May 8, 2003]

 HERCULES CGQ DATA

1. BOARD ISSUES

ISSUE ID	RATING ISSUE	RESPONSE	ADDITIONAL COMMENTS
1	Board Composition	The Board is comprised of a majority of "independent" outsiders.	There are currently 13 members on the company's Board. Four of them were nominated by ISP and elected by shareholders in 2001. Dr. William Joyce, the company's CEO, is a member of the Board as well as his four handpicked directors, all of whom have prior relationships with him and were appointed to the Board without initially being elected by shareholders. To the best of our recollection, with the exception of one or two isolated instances with respect to one or two directors, the majority directors have never voted against Dr. Joyce's position.
2	Nominating Committee Composition	The nominating committee is comprised solely of "independent" outside directors.	Two of the members of the nominating committee have prior relationships with Dr. Joyce. In addition, despite being told that committee assignments were based on seniority, the Board has refused to include any of the four directors elected at the 2001 annual meeting of shareholders on the nominating committee while appointing two directors who were appointed to the Board by the CEO after the minority directors' election.

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3	Compensation Committee Composition	The compensation committee is comprised solely of "independent" outside directors.	Two of the four members of the compensation committee have prior relationships with Dr. Joyce. Also, despite being told that committee assignments were based on seniority, the Board has refused to appoint Mr. Heyman, Mr. Kumar or Ms. Schaffer (three minority directors) to the audit or compensation committees while appointing two directors to each of these committees who were appointed to the Board by the CEO after the minority directors' election.
4	Governance Committee Composition	The company does not have a separate committee that oversees governance issues.	
5	Board Structure	The Board of Directors is classified.	
6	Board Size	There are currently thirteen directors serving on the Board. The charter provides that the Board must have between 7 and 18 members.	
7	Cumulative Voting Rights	Shareholders do not have cumulative voting rights in director elections.	The company has a highly unusual bylaw election provision which the Board interprets to require a majority vote (not a plurality as is seen in virtually all companies) of the outstanding shares of common stock for the election of directors. Despite the insistence of the minority directors, the Board has refused to nullify this provision.

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ISSUE ID	RATING	ISSUE	RESPONSE	ADDITIONAL COMMENTS
8		Boards Served On	Dr. William Joyce, the company's CEO, serves on the boards of two or	Dr. Joyce lives over 200 miles away from Wilmington, the city in which the company has its

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fewer other companies.

headquarters, and he has refused to move closer to Wilmington.

9	Former CEOs	No former CEO of the company serves on the Board.	
10	Chairman/CEO Separation	Dr. William Joyce is both the Chairman and Chief Executive Officer of the company.	Four current directors, who have joined the company's Board without shareholder approval since Dr. Joyce became CEO, have prior ties with Dr. Joyce and, to the best of our recollection, have never voted against Dr. Joyce's position. In addition, Dr. Joyce has refused to appoint a CFO, has been acting as the company's CFO and serves on the Board's Finance Committee (and even served as Chairman of this committee for two meetings). We believe this is particularly troubling given the company's myriad of financial problems including the need to restructure the company's long-term debt and its significant pension and asbestos exposures. Moreover, under Dr. Joyce's leadership, the company has taken substantial "non-recurring" charges in all 7 full reported quarters since he came to the company despite the SEC's increasing concern about the misuse of pro-forma earnings. In fact, over these 7 quarters, the company has reported \$384 million in net, after tax, "non-recurring" charges while only recording about \$78 million in "pro-forma" earnings. Finally, it should be noted that the company has filed its periodic reports late four times since the beginning of 2001, including the first certification required by the Sarbanes-Oxley Act of 2002.
11	Board Guidelines	The company does not have Board guidelines.	
12	Withhold Votes	At the Company's 1991 annual meeting of stockholders, a majority of stockholders voted to redeem or submit the Company's then existing	

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rights plan to a binding stockholder vote. Such rights plan was eventually redeemed by the Board prior to its expiration. However, in August 2000, the Board of Directors adopted the Company's current rights plan, without shareholder approval.

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ISSUE ID	RATING	ISSUE	RESPONSE	ADDITIONAL COMMENTS
13		Change Board Size	The Charter and By-laws of the company do not require stockholder approval and the company does not have a written policy for increasing/decreasing the size of the Board. In 2001, after the Board's nominees had been defeated at the Company's 2001 annual meeting of stockholders, the Board of Directors, without stockholder approval, increased its size by one in order to reinstate one of the defeated directors to the Board.	
14		Board Attendance	Two majority directors attended less than 75% of the Board meetings last year.	
15		Board Vacancies	Any vacancies occurring on the Board of Directors, whether by death, resignation, removal or an increase in the number of directors or otherwise may be filled by the affirmative vote of a majority of the remaining directors, even though less than a	All of the vacancies in the last two and a half years have been filled with individuals that have prior ties with Dr. Joyce. In addition, in 2001, after the Board's nominees had been defeated at the Company's 2001 annual meeting of stockholders, the Board of Directors, without stockholder approval, increased its size by one in order to reinstate one

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quorum. The company's practice has been to fill vacancies without a shareholder vote (vacancies have been filled four times in the last two and a half years without shareholder approval). of the defeated directors to the Board. To the best of our recollection, Dr. Joyce's handpicked directors have never voted against his position.

16	Boards Served on - Other than the CEO	The company does not have a policy that limits the number of other boards that directors may serve on.
17	Related Party Transaction	No "related party" transactions in which the CEO is a party have been disclosed.
2. AUDIT		
18	Audit Committee Composition	The audit committee does not include insiders or affiliated outsiders.

ISSUE ID	RATING	ISSUE	RESPONSE	ADDITIONAL COMMENTS
19		Audit Fees	For 2002, the total fees paid by the company to its auditor was \$21.1 million. Of this amount, the fees paid by the company for recurring audit related services was \$3.1 million (an additional \$1.8 million was paid for tax compliance services) while the company's auditor was paid \$9.9 million in fees for non-audit related services. (It should be noted that in addition to the fees described above, \$6.3 million in fees were paid in 2002 for audit related services	The company's relationship with its auditor in 2002 is consistent with the company's pattern of engaging its "independent" auditor for non-audit services. In particular, in 2000, the company paid \$2.1 million in audit fees and \$8.6 million in non-audit fees to its accounting firm and, in 2001, the company paid \$2 million in audit fees and \$8.7 million in non-audit fees to its accounting firm (although it should be noted that an additional \$8.2 million was billed by the company's accountants in 2001 for audit and other services rendered in 2000 and 2001 in connection with the company's amendment of

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provided in connection with one-time events including the company's sale of its Betz-Dearborn business and its amendment of its credit facilities.)

its credit facilities). In addition, the total fees paid by the company to its auditor in both 2001 (\$18.9 million) and 2002 (\$21.1 million) was greater than any company in the S&P 500 Chemicals Index other than DuPont, which is more than 10 times the size of Hercules.

20	Auditor Rotation	The company does not have a policy of rotating auditing firms.
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21	Audit Ratification	The company's selection of an independent accounting firm was put up for shareholder ratification last year.
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3. CHARTER AND BYLAWS

22	Poison Pills Adoption	The company has a poison pill in place that was not approved by shareholders.	The poison pill was adopted less than two weeks after ISP publicly reported acquiring 9.9% of the company's shares. This poison pill was then used to deny the company's shareholders the right to consider a proposal by ISP to acquire an additional 25 million shares for \$17.50 per share in cash - thereby costing the company's shareholders \$185 million (based on recent market prices). Thereafter, even after ISP responded to the company's stated concern by offering a standstill agreement that would prevent it from ever acquiring control of the company, the Board refused to amend the poison pill to increase the trigger to 15%. In fact, Dr. Joyce indicated that he would only consider a change in the threshold if ISP would agree not to contest his reelection, which ISP obviously rejected. Finally, it should be noted that this poison pill was adopted by the Board, without a shareholder vote, despite the fact that, in 1991, a non-binding proposal to redeem the company's then-existing poison pill, or submit it to a shareholder vote, was approved by shareholders.
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23 Poison Pill Features
 - Sunset Provision The company's poison pill does not contain a sunset provision (a provision requiring reapproval of the plan at least every three years).

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ISSUE ID	RATING ISSUE	RESPONSE	ADDITIONAL COMMENTS
24	Poison Pill Features - Qualified Offer Clause Provision	The poison pill does not contain a qualified offer clause.	
25	Poison Pill Features - Trigger Provision	The poison pill contains a trigger provision of 10%.	According to an Investor Responsibility Research Center study of more than 2,000 companies with poison pills, only 6% have 10% triggers.
26	Amendment to the Charter / Bylaws	In order to amend, alter or repeal certain provisions of the charter and bylaws (or to adopt any provision inconsistent therewith), the affirmative vote of the holders of at least 80% of the voting power of all the shares entitled to vote in the election of directors, voting together as a single class, is required.	
27	Approval of Mergers	Certain extraordinary transactions, including a merger or consolidation of the company, with an Interested Stockholder (as defined in the Charter, generally speaking a shareholder that holds a stake of 10% or more of the voting power of the company) or any	It should be noted that, despite the urging of major institutional shareholders and certain directors, the Board refused to allow the company's shareholders to vote on the 2002 sale of the BetzDearborn business, which accounted for a significant amount of the company's assets.

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affiliate thereof require the affirmative vote of holders of at least 80% of the voting power of the then outstanding shares of capital stock of the company entitled to vote generally in the election of directors (Charter, Art. 9, Sec I). Supermajority approval, however, is not required if the extraordinary transaction was approved by the majority of the Disinterested Directors (as defined therein) and complies with the other requirements of Art. 9, Sec. II of the Charter.

28	Written Consent	Shareholders can not act by written consent.
29	Special meetings	Unless otherwise prescribed by law, special meetings of shareholders may not be called by shareholders; special meetings can only be called by the Chairman of the Board, the CEO, the President or a majority of the Board of Directors.

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ISSUE ID	RATING ISSUE	RESPONSE	ADDITIONAL COMMENTS
30	Board Amendments	The company's Board of Directors is authorized to make, alter, amend or repeal from time to time the By-laws, without subsequent ratification through a shareholder vote. Additionally, shareholders may amend or repeal the By-laws by a majority vote of the holders of capital stock	

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entitled to vote thereon at any shareholders meeting, provided that notice of such proposed amendment or repeal is included in the notice of such meeting. However, in order to amend, alter or repeal certain provisions of the bylaws (or to adopt any provision inconsistent therewith), the affirmative vote of the holders of at least 80% of the voting power of all the shares entitled to vote in the election of directors, voting together as a single class, is required.

31	Capital Structure	The company is authorized to issue 302,000,000 shares, of which 300,000,000 shall be shares of common stock and the remaining 2,000,000 shall be shares of preferred stock. The preferred stock is blank check and could be used to prevent consummation of a transaction opposed by management.
32	Poison Pill Features - Tide Provision	The company's poison pill does not contain a TIDE (Three-Year Independent Director Evaluation) provision.
<hr/> 4. STATE OF INCORPORATION <hr/>		
33	Anti-Takeover Provisions	The company is incorporated in a state with anti-takeover provisions.
34	Acquisition Statute	The company is not subject to a control share acquisition statute.
35	Cash-out Statute	The company is incorporated in a state without a cash-out statute.

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36	Freezeout provision	The company is subject to a freezeout provision.
37	Fair Price Provision	The company is incorporated in a state without a fair price provision.

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ISSUE ID	RATING ISSUE	RESPONSE	ADDITIONAL COMMENTS
38	Stakeholder Laws	The company is not subject to a stakeholder law.	
39	Endorsement of Poison Pills	Even though Delaware General Corporation Law does not have a statute that expressly endorses poison pills, case law and corporate practice in the state approve the use of rights plans by Delaware entities.	
5. EXECUTIVE AND DIRECTOR COMPENSATION			
40	ISS Vote based on plan cost	The last time ISS evaluated the company's option plans, ISS deemed the shareholder value transfer of the plan to be reasonable.	
41	Options Repricing	Options have not been repriced without shareholder approval during the past three years	It should be noted that, partially in recognition of the fact that recent stock option grants were "out of the money", the Board, in lieu of repricing options, recently decided to take the further step of granting restricted stock awards instead of stock options to senior management as part of their 2003 compensation package.
42	Repricing prohibited	The Hercules Long-Term Incentive Compensation Plan expressly prohibits repricing. The Non-	

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Employee Director Stock Accumulation Plan does not expressly prohibit repricing.

43	Shareholder Approval of Stock-incentive plans	All stock-based incentive plans have been approved by shareholders. However, changes to such plans which were adopted in 2000 by the company's Board (including a change in the definition of "change of control" to include a shift in the composition of a majority of the directors as a result of a proxy contest which will accelerate the vesting of all awards) were never disclosed to shareholders even though the company solicited votes in 2002 to extend the term of the plan and to increase the maximum annual awards that an individual may receive.	The restricted stock grants recently approved by the Board were intentionally chosen rather than options because the Board could not, it was acknowledged, deliver equivalent value in stock options without securing further shareholder authorization.
44	Committee Interlocks	There are no interlocks among compensation committee members.	Two of the four members of the compensation committee were handpicked by Dr. Joyce and have prior relationships with him.

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ISSUE ID	RATING ISSUE	RESPONSE	ADDITIONAL COMMENTS
45	Director Compensation	Directors receive the majority of their compensation in cash and the balance of their compensation in the form of equity. However, the shares granted to directors are issued at a 15% discount to their fair market value.	In addition, the compensation of non-employee directors was increased by almost 100% in October 2002 despite the objection of the minority directors. Moreover, only after the minority directors were elected and demanded its termination did the company terminate a program pursuant to which million dollar gifts were made to charitable organizations on behalf of directors.

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46	Pension Plans	To our knowledge, non-employee directors do not participate in the company's pension plan.	
47	Option Expensing	The company does not expense stock option grants on its income statement.	The minority directors have requested that the company expense stock option grants; however, the majority of the Board has not acted upon such request. In addition, according to a study of 25 chemical companies published by Deutsche Bank Securities, the company would have had the 4th highest fair value stock option expense as a percentage of 2002 earnings per share.
48	Option Burn Rate	The aggregate amount of options granted in the last 3 years is 8,443,999. This amount is equal to 7.72% of the total outstanding shares of the company's common stock (109,361,651). Therefore, the average options granted in the past three years as a percentage of basic shares outstanding exceeds 2% (2.24%).	
49	Corporate Loans	The company's option plans do not provide for company loans to employees.	

6. QUALITATIVE FACTORS

50	Mandatory Retirement Age for Directors	The company does not have a mandatory retirement age for directors.	
51	Term Limits	The company does not have term limits for directors.	Several current directors have been serving since 1993.

ISSUE ID	RATING	ISSUE	RESPONSE	ADDITIONAL COMMENTS
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52	Board Performance Reviews	The company does not have a policy pursuant to which the Board reviews its own performance regularly.	It should be noted that the management objectives set forth by the Board's Compensation Committee for the company's chairman and CEO were limited almost exclusively to cost reduction and other measurements directly related thereto. By way of just one example, management of the company's two principal non-operating issues, its pension and asbestos exposures, which resulted last year in pre-tax charges to earnings of more than \$600 million, were not even mentioned in Dr. Joyce's 2002 management objectives. Moreover, we believe that the Board has failed to make sure that the CEO's compensation arrangement is designed to closely align his interests with those of the company's shareholders. By way of example, under Dr. Joyce's employment contract, he would have been paid more money had the company been sold for \$9 per share in his first year of employment (even though it closed at \$12 per share on the day he was elected CEO) than if he had effectuated a turnaround of the company's businesses, helping to propel the company's stock to \$19 per share during the same period of time.
53	Outside Directors Meet without CEO	Except to consider a matter in which the CEO might have an interest, outside directors do not meet without the CEO present.	Meetings without the CEO present were held only after the minority directors insisted on it.
54	CEO Succession Plan	The company has neither a CEO succession plan nor a policy in that regard.	The lack of a CEO succession plan is particularly troubling given Dr. Joyce's age and the circumstances under which he was brought to the company. The company does not have a president, COO or CFO nor has it taken any action to retain a person in any of these positions.
55	Outside Advisors	There is no express authority that permits the outside directors to hire their own advisors.	Contrary to the wishes of the minority directors, the outside directors have been reluctant to hire outside advisors other than the historical advisors of

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the company.

56 Directors Resignation There is no disclosure of a policy that directors are required to submit a letter of resignation upon a job change.

7. OWNERSHIP

57 Stock Ownership All directors own securities of the company. Other than Mr. Heyman, the company's directors were granted a significant portion of their shares for their service on the company's Board. In fact, three current directors (one-third of the majority directors), including Dr. Joyce, have never purchased a single share of company stock.

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ISSUE ID	RATING	ISSUE	RESPONSE	ADDITIONAL COMMENTS
58		Stock Ownership Guidelines for Executives	The company has stock ownership guidelines for executives, although it is not clear whether such guidelines are being followed or enforced.	The Company has entered into change of control agreements with several executives that were not approved by shareholders. Pursuant to such agreements, certain executives may receive in excess of three times their base salary and bonus upon a change of control. We estimate that these agreements will have a potential cost to the company of well in excess of \$10 million. In addition, the restricted stock awards granted to management last month are another form of "golden parachute" which could have a potential cost to shareholders of more than \$10 million.
59		Stock Ownership Guidelines for Directors	The company has stock ownership guidelines for directors.	
60		Officers and	Officers and directors	

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Directors Ownership other than Mr. Samuel Heyman own less than 1% of the company's outstanding shares. Mr. Heyman may be deemed to beneficially own approximately 9.1% of the company's outstanding shares.

8. DIRECTOR EDUCATION

61	Director Education	To our knowledge, no directors have participated in an ISS accredited director education program.
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International Specialty Products Inc., Samuel J. Heyman, Raymond S. Troubh, Sunil Kumar, Gloria Schaffer, Harry Fields, Anthony T. Kronman, Vincent Tese and Gerald Tsai, Jr. and certain other persons may be deemed participants in the solicitation of proxies from the shareholders of Hercules Incorporated ("Hercules") in connection with Hercules' 2003 Annual Meeting of Shareholders. Information concerning such participants is available in the Hercules Shareholders' Committee for New Management's (the "Committee") revised preliminary proxy statement on Schedule 14A (the "Preliminary Proxy Statement") filed by the Committee with the Securities and Exchange Commission (the "SEC") on May 6, 2003.

SHAREHOLDERS OF HERCULES ARE ADVISED TO READ THE COMMITTEE'S DEFINITIVE PROXY STATEMENT (THE "DEFINITIVE PROXY STATEMENT") IN CONNECTION WITH THE COMMITTEE'S SOLICITATION OF PROXIES FROM HERCULES SHAREHOLDERS WHEN IT BECOMES AVAILABLE, BECAUSE IT WILL CONTAIN IMPORTANT INFORMATION. Shareholders of Hercules and other interested parties may obtain, free of charge, copies of the Preliminary Proxy Statement and the Definitive Proxy Statement (when available) and any other documents filed by the Committee with the SEC, at the SEC's Internet website at www.sec.gov. The Preliminary Proxy Statement and the Definitive Proxy Statement (when available) and these other documents may also be obtained free of charge by contacting Georgeson Shareholder Communications Inc., the firm assisting the Committee in the solicitation of proxies, toll-free at 1-866-288-2190.