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Defense Council*

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TO: Mr. Eliot Porter

FROM: Bill DeWind

RE: Update on Three NRDC Priority Issues

DATE: June 29, 1987

I enclose a memo, written by Adele Auchincloss and reviewed by the project staff, on the progress NRDC has made on three issues in the last months. We have chosen to write to you about these issues because of their high public visibility and importance to NRDC.

I also wish to bring to your attention that NRDC's annual meeting will be held the afternoon of September 17th in New York City. I hope you will put this date on your calendar. We will send you an official invitation at a later date.

Alaskan Preservation

The Arctic National Wildlife Refuge in Northern Alaska was expanded to encompass 19 million acres under the Alaska Lands Act in 1980. Congress did not, however, grant wilderness status to the 1.5-million acre coastal plain of the Refuge because of high interest in oil exploration along the Beaufort Sea coast at that time. As early as 1981, the Department of Interior started inviting solicitations by industry for oil and gas leasing in the Refuge, and allowed some exploration to occur.

In April of 1987, Interior Secretary Donald Hodel recommended that Congress open the Refuge's entire coastal plain to oil development.

The coastal plain is the summer breeding grounds for the 180,000-member Porcupine caribou herd, and home to musk-ox, polar and grisly bear, wolves, arctic fox and in season, millions of migrating birds including peregrine falcon and snow geese.

The Interior Department substantiated the drive to develop the Refuge's coastal plain with the assurance that significant environmental impacts would not result. Earlier Department documents contradict this claim. A November 1986 report stated that oil development in the area "could result in a major population decline and change in distribution of 20-40% of the caribou herd." By April, Secretary Hodel was claiming that "no

appreciable population decline (of caribou) is expected", in spite of the fact that no further known studies of the area or the herd were conducted.

Secretary Hodel holds up the Prudhoe Bay oil fields as an example of oil development in the arctic that has produced no significant environmental damage. In reality, Prudhoe Bay is a sprawling industrial complex which generates massive amounts of pollution. In 1985, more than 500 oil spills were recorded with 82,000 gallons of oil lost. In addition, refuse dumps containing trucks, batteries and other solid waste that is difficult to dispose in a frozen environment pile up on the tundra; reserve pits full of drilling wastes, oil and grease commonly leak; air pollution from what may be the largest collection of gas-fired turbines in the world create smoke trails that can be seen hundreds of miles away, and gravel mining to build roads and a supportive base for heavy equipment destroys animal habitat.

Secretary Hodel states that no significant environmental damage could occur in the Refuge by drilling for oil or gas. Even the EPA and Library of Congress have publicly questioned that claim.

But, from the oil industry's point of view, it makes economic sense to move the rigs, trucks, housing units and vast amount of other equipment at Prudhoe Bay 60 miles to the east to the Refuge rather than ship it elsewhere over difficult terrain. It also

makes economic sense for the industry to continue to use the expensive Alaska pipe-line, especially as oil and gas fields are depleted in Prudhoe Bay. Last year, production at Prudhoe Bay reached the halfway point and will steadily decline by 10 to 12 percent from now on. So oil companies are pushing for a new "Bayonne by the Beafort" even it will only produce enough oil to satisfy U.S. consumption for between 45 and 200 days.

In April, the Department also stated that there was only one chance in five of discovering a significant oil reserve (9 billion barrels) on the coastal plain. Alaskan geologists claim that, at most, there is a possible a reserve of only 600 million barrels, or what the United States consumes in 45 days.

The Secretary's cry of "national security" is hard to swallow given the administration's refusal to promote a national energy program which could reserve vast amounts of oil for an emergency, and promote energy efficiency and conservation systems to cut the nation's dependency on oil. The President last year vetoed an appliance efficiency bill (driven by NRDC's negotiations with manufacturers) that would save the equivalent of all the undiscovered oil anywhere in the country by the end of the century. The bill was finally enacted this year.

Along with other environmental organizations, NRDC will fight for the caribou and the polar bear and for the inclusion of the

Refuge as an integral part of a unique wilderness system that spans the Refuge and parts of Canada where the caribou winter. We are preparing a comprehensive scientific report on the environmental costs of drilling at the Refuge that we will use to convince congress to block Interior's plan.

I'd rather wear a sweater for 45 days and know that the Porcupine herd is still calving and the snow geese flying in to rest in the Refuge.

Global Warming

In 1974, Professor Sherwood Roland and Dr. Mario Molina of the University of California discovered that the ozone layer in the earth's stratosphere could be eaten way by chlorofluorocarbons (CFCs), chemicals then used most heavily in aerosol sprays. The discovery caused a great public stir in this country and around the world. In response, largely through the efforts of NRDC, CFCs were banned from aerosol sprays in the United States in 1978, and subsequently in Canada, Scandinavia, and some other countries.

The recent appearance of a continent-sized hole in the ozone layer over Antarctica has refocused the world's attention on this problem, and once again NRDC is leading the fight for protection of the stratosphere.

CFCs, and related chemicals called halons, are long-lived compounds containing chlorine and bromine which, when released into the atmosphere, gradually migrate into the stratosphere. Broken apart by ultraviolet radiation there, they catalyze a chain reaction which destroys the world's protective shield of ozone. Ozone depletion allows more ultraviolet radiation to reach the earth's surface. Serious known and potential effects on human health include skin cancer, cataracts, and immunological disorders. Increased ultraviolet radiation will also cause crop losses, damage other terrestrial flora and fauna, and may even disrupt marine food chains. In addition, CFCs and halons contribute to the "greenhouse effect," a serious warming of the earth's climate, by absorbing infrared radiation reflected from the earth's surface.

The U.S. aerosol ban resulted in only a temporary drop in world-wide CFC consumption. Notwithstanding our actions, most industrialized nations of Europe and the Far East continue to use CFC aerosol sprays. In addition, other uses of these chemicals -- in refrigeration and air-conditioning, as cleaning solvents in the manufacture of electronic equipment (such as personal computers), and as the blowing agent for plastic foams (including styrofoam cups and fast-food containers) -- have grown rapidly. CFC producers and users have continued to resist switching to substitute chemicals. World-wide use of these chemicals is now higher than ever. Millions of tons of CFCs are being added to

the atmosphere each year.

Despite a 1980 promise to regulate CFCs beyond their aerosol uses, the EPA actually did nothing in the early years of this decade. As a result, NRDC brought a suit against the Agency under the Clean Air Act in 1984. The suit was settled with a court-ordered schedule requiring EPA to issue control regulations for domestic emissions this year. Since then, EPA has been stirred to active concern once again.

In October 1986, EPA published a comprehensive assessment of the health and environmental consequences of continued production of CFCs and related compounds. The Agency's assessment projects that as many as 40 million extra skin cancer cases and 12 million extra instances of cataracts will occur in the U.S. alone among people alive now and born by 2075 if emissions of CFCs are allowed to increase at historical rates. The assessment also concludes that just to hold the atmospheric concentration of CFCs stable at current levels will require an 85% global reduction.

In a major announcement last fall, the American CFC industry abandoned its previous position of total opposition to controls on CFC manufacturing. The world's largest producer, DuPont, identified less destructive substitutes that could be brought on to the market in five years. The industry, however, supports only a freeze at current production levels and still opposes the

necessary CFC reductions.

Since ozone depletion is a global phenomenon, much effort is being made to achieve a global agreement to restrict the use of CFCs and halons. Negotiations on a treaty to limit production of these chemicals have been under way for the last year, under the auspices of the United Nations Environment Program. Three negotiating sessions have been held in Europe. NRDC has had a key role in shaping the U.S. position, and members of our staff have attended each session as accredited observers.

Largely echoing NRDC's call for a CFC and halon phase-out, the U.S. entered those negotiations with a proposal to reduce production of these chemicals world-wide by up to 95% in 10 to 14 years. The proposal was bitterly resisted by the countries of the Common Market (with the notable exception of Denmark and West Germany) and by Japan. But U.S. leadership resulted in significant progress in the first two rounds of negotiations.

By the third negotiating session, in April 1987, however, inconsistency of the U.S. position resulted in a "trial balloon" resolution containing several alternative proposals. The most lenient alternative would achieve only a 20% reduction in CFCs and would be an abject failure. Even the most stringent option would tentatively assure only a 50% reduction in CFCs by the late 1990s -- and less than 50% if any allowance is made for growth in

developing countries. This is far less than the 85-95% reduction needed to stabilize and ultimately reduce CFC and halon concentrations in the atmosphere. The proposals also fail to cover the halons, although there is some hope that this omission will be rectified later.

There is still the potential to reach a landmark international agreement if the U.S. and other advocates of sharp reductions stick to their guns, but much hard bargaining remains ahead. There is, however, a strong under-current of resistance in the U.S. Cabinet. Secretary of the Interior Donald Hodel created a public outcry in May 1987 by suggesting reliance on "personal protection" measures, i.e., staying out of the sun and wearing hats, sunglasses, and sunscreen lotions, was preferable to production cutbacks. While EPA and the State Department remain strong advocates of a CFC treaty, the decision on U.S. negotiating policy may ultimately be made by President Reagan. NRDC staff have been intimately involved in lobbying and media efforts to keep U.S. policy on the right track.

On the domestic front, Senators John Chafee and Max Baucus and Representative Jim Bates have introduced legislation in Congress which would progressively eliminate 95% of the CFCs that cause the most damage by 1995. The legislation also would leverage cooperation by other countries by banning the import of any product containing CFCs from a nation not also phasing them out.

NRDC staff helped draft this legislation. In June, the Senate voted 80-2 for a resolution endorsing a CFC phase-out and a short-term reduction of at least 50%. Taking a small, symbolic step, the Senate banned foam packaging that contains CFCs from their cafeteria. If the U.N. efforts fail, NRDC will push for passage of this legislation.

NRDC continues to monitor developing scientific information, including data on the Antarctic ozone hole. We stand ready to propose a more rapid complete halt to CFC production, if necessary. We are working with the EPA to assure performance of the Agency's obligations under the settlement of our lawsuit. We are continuing to participate in the United Nations negotiations directly and we are offering assistance and information to environmental groups in other countries. We will keep up a constructive dialogue with American industry and will continue encouraging major producers and users to show flexibility on regulation.

Clean Water Enforcement

NRDC's Citizen Enforcement Project was launched in 1983 in response to the growing concern among the Board and staff that budget cuts and personnel changes at EPA were making federal enforcement efforts ineffective. We decided to bring our own cases under the Clean Water Act, which empowers citizens to prosecute industries directly when pollution control limits are

violated and the regulatory agency has failed to act. So, armed with a list of the most serious polluters in 14 states, we went to work on behalf of NRDC members and local organizations in the affected regions.

Thus far, NRDC has initiated 156 cases against major polluters. About 60% of these cases have been settled with consent decrees that include substantial penalties and a schedule for achieving compliance; about 10% have been dropped prior to litigation when defendants were able to prove that there was no significant ongoing problem; and the rest are in negotiation or are pending. The lion's share of the penalties have gone to environmental projects which benefit the environment in the affected area. The defendant may also choose to direct the penalty to the state or federal government. Several recent settlements have gone to state attorney general offices earmarked for environmental enforcement.

Recently, Congress approved amendments to the Clean Water Act which increase daily fines for each violation from \$10,000 to \$25,000, so a lot of money is at stake.

In 1984, NRDC and the Chesapeake Bay Foundation filed suit against the Bethlehem Steel Corporation's Sparrow Point, Maryland plant which discharges approximately 300 million gallons of wastewater daily into Chesapeake Bay. The wastewater, containing

cyanide and toxic metals in quantities greatly exceeding the amount permitted by law, had turned areas of the Bay adjacent to the plant into a "dead" sea. In February of 1987, an out-of-court settlement was reached fining Bethlehem \$1.5 million, one of the largest Clean Water Act penalties on record. Of this amount, \$1.0 million will be paid to a third-party environmental fund approved by the plaintiffs, to be used for protecting Chesapeake Bay, and \$500,000 will go to the U.S. Treasury. Also, a new and more stringent permit has been issued to Bethlehem Steel by the EPA. Technical work provided by NRDC was critical in formulating the new permit's stricter terms. NRDC will monitor the company's compliance with the new permit.

Other successful suits brought by NRDC include: a case against Gwaltney of Smithfield (meat packers) resolved for \$1.3 million in fines, if upheld under appeal to the Supreme Court; a case against General Electric of Bridgeport and Plainville, Connecticut, settled for an amount sufficient to buy the state its first water quality testing lab, and a case against Raytheon Corporation of Lowell, Massachusetts resolved by fines used to save a small national wildlife refuge from development. Currently, NRDC is also bringing legal action against municipalities for failure to require industries to "pretreat" toxic waste before it is discharged into waste disposal plants which aren't equipped to treat it. Lawsuits to control storm sewer run-off are also in the offing for us.

Clearly, our victories indicate that citizens can play a major role in enforcing clean water laws when the EPA or states fail to do so. Polluters are getting the message that compliance with the law is mandatory.

NRDC believes that court-ordered fines for improvement of local environments are a fitting way to reprimand local polluters who are in non-compliance with federal or state statutes. We are now giving active consideration to the ways in which we can expand our successful enforcement efforts beyond the Clean Water Act to other environmental laws.