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 Date: 08/08/2000

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1 memo	Becky Norton Dunlop to Richard Benedick, re September 8-11 Negotiation Session, 2p <i>R 11/29/02 NLSFOO-013 #17</i>	8/26/87	P1/F1

RESTRICTIONS

P-1 National security classified information [(a)(1) of the PRA].
 P-2 Relating to appointment to Federal office [(a)(2) of the PRA].

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United States Department of State

Bureau of Oceans and International Environmental and Scientific Affairs

Washington, D.C. 20520

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Date: Aug 24

Time: 9:30 AM

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Name: ANDREW SENS Tel. No. 647-9266

Office Symbol/Number: OES/ENV Fax No. _____

Document Description: Entry into Pages to Follow: 2

Face Provision 2 pages

TO

Name: DR. BLENSIE Tel. No. 6640

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MESSAGE

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ENTRY INTO FORCE PROVISION

It is highly desirable that the protocol enter into force (EIF) with all the major producers -- EC, U.S., Japan, USSR -- ratifying. At the June 29-30 meeting in Brussels, and in subsequent demarches by U.S. Embassies in key capitals, the U.S. has pressed for a very high weighted proportion of CFC production -- 80 percent or more -- before EIF. Responses from other countries have not been promising. Smaller countries -- e.g., Canada, Norway, New Zealand -- feel that the stress on size denigrates their own participation. Larger countries -- e.g., UK -- question why we would give a veto over EIF to Japan or the USSR.

The fact that the UNEP text now includes a 60 percent requirement establishes the principle of weighted proportion, and it would be difficult for opponents to remove it in Montreal. Realistically, however, one must question what the U.S. stands to gain or lose by insisting on 80 or 90 percent.

As the attached EPA analysis indicates, the 60 percent requirement provides EIF on ratification by the U.S. and EC. At 80 percent, either Japan or the USSR would have to join, and at 90 percent, both would have to join. However, neither would be isolated if both delayed ratifying, and there is a risk that such delay could -- if the EIF requirement were set at 80 or 90 percent -- mean that there would be no international accord.

A requirement of Japan/USSR participation before EIF would give either or both a veto over the protocol. Neither of these countries has up until now indicated acceptance of the halon freeze, the 50 percent CFC reduction, and other critical elements of the U.S. position. A message last week from the U.S. Embassy in Tokyo indicates, in fact, that Japan does not expect an agreement to emerge from the Montreal meeting. Under these circumstances, the U.S. (and others) would probably have to make substantial concessions to obtain their agreement to a protocol if we give them a veto. Even then, ratification and early EIF is not assured. The EPA paper concludes that an EIF requirement above 60 percent is not likely to encourage adherence by Japan or the USSR, and increases the risk of a substantively weakened protocol and/or a long delay in EIF.

In contrast, if the protocol were to enter into force with both the EC and U.S., along with other countries, there would be a significant element of political pressure, plus the threat of trade restrictions, as "incentives" for Japan to join. Japan and the USSR could not, alone or together, block the rest of the world from putting this landmark agreement on the record.

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A final, and crucial, consideration is the domestic U.S. reaction. Insistence by the U.S. on an 80-90 percent EIF requirement would be criticized as a ploy to set an unrealistically high target with the expectation that it would fail and thus obviate our acceptance of the protocol. In this case, or if the treaty were delayed, or weakened by substantive concessions to obtain Japan/USSR adherence, it is likely that court order, legislation, or EPA mandate would force more severe unilateral restrictions on U.S. industry.

Thus, the critical question is not whether the U.S. should participate in an international protocol without Japan, but whether a protocol including the U.S. and EC, but perhaps initially not Japan, is more in the U.S. interest than no protocol or a weak protocol. The first priority should be to ensure that EC countries do not profit from unilateral U.S. action, and to protect the ozone layer from the principal source of emissions, which is the EC, with 42 percent of world production (versus 11 percent for Japan).

Tactically, the U.S. should continue to press for 80%, but not to the extent that it would break the negotiations or isolate us; ultimately, the 60 percent requirement would be acceptable as it would involve EC participation along with the U.S.

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-3-

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THE WHITE HOUSE

WASHINGTON

August 25, 1987

MEMORANDUM FOR NANCY J. RISQUE

FROM:

VICKI MASTERMAN *Vicki Masterman*

SUBJECT:

Stratospheric Ozone Negotiations

The State Department and EPA have raised again the issue of participation in the international protocol. Specifically, they have repeated their concerns over setting the required participation percentage too high. In the attached issue paper (Tab A), the State Department discusses the issues involved in determining the desired minimum participation. Also attached is a chart prepared by EPA listing the countries likely to be included under various alternative protocol participation requirements. (Tab B).

Richard Benedick has asked for inter-agency participation on the delegation to the final negotiating session. His memorandum to Commerce, Energy, Interior, EPA and USTR requesting their nominees for the U.S. delegation is attached. (Tab C).

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United States Department of the Interior



OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

August 26, 1987

Memorandum

To: Richard Benedick
Deputy Assistant Secretary - Oceans and Environment

From: Becky Norton Dunlop *BN*
Deputy Chief Operating Officer

Subject: September 8-11 Negotiating Session ~~(S)~~

The Department of the Interior continues to be very interested and concerned about the international ozone agreement to be considered in Montreal. We strongly support the guidance which the President issued. In particular, two items about which we feel quite strongly are the number of countries which must sign in order to produce a protocol which would be effective and the chemicals which would be included in the protocol. It is our understanding that the U.S., the E.C., the Soviet Union, Japan and Canada must all sign in order for the protocol to have any real chance for effectiveness. And, with respect to the chemical coverage, it is our understanding that all ozone-depleting chemicals, including CFC-113 and the halons, are to be included in the freeze and possibly in the subsequent reduction schedules. ~~(S)~~

There are other points which we believe are critical in terms of fairness in application, verification and future decision-making. I believe that an updated briefing from DOS will be helpful in assuring that we have a clear understanding of the explicit interpretation of the guidance on these points. ~~(S)~~

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NLS FOO-013 #17

BY WJ NARA, DATE 11/29/02

DERIVATIVE CL BY Dep. Chief Oper. Officer
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If these understandings relating to country-coverage and chemical-coverage are shared by the negotiating team, and a briefing could be scheduled to review the other key matters, then the Department of the Interior would yield its opportunity to serve on the USG team and urge that Tom Hookano, Department of Justice, and J.R. Spradley, Department of Commerce be permitted to serve in addition to the Department of State and the Environmental Protection Agency. ~~(C)~~

Thank you for communicating with us on this matter. ~~(U)~~

cc: Nancy Risque
Ralph Bledsoe
Tom Hookano
J.R. Spradley

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THE WHITE HOUSE

WASHINGTON

August 26, 1987

Stratospheric Ozone

* Montreal Meetings:

-September 8-11, Final Negotiations;

-September 14-16, Conference of Plenipotentiaries;

-U.S. Delegation will include representatives from State, EPA, Justice, Energy, USTR, and possibly Commerce. Richard Benedick will lead the delegation for the final negotiations, and Lee Thomas will lead the delegation at the Conference of Plenipotentiaries.

* Important Issues in the Draft Protocol Text:

- Inclusion of the Halons (Article 2);

- Timing of the reductions (Article 2);

- Draft contains two alternative trade provisions (Article 4);

- Entry Into Force (Article 15) -- tentatively provides for entry into force upon ratification by countries representing at least 60 percent of 1986 global production. Benedick needs guidance on the desired minimum participation. Trade provision is relevant to participation.

* Circular 175 Process:

-State believes it must adhere to its internal requirements calling for an inter-agency Circular 175 authorization to sign the protocol.

-White House Counsel and State Department Solicitors are looking at whether the internal State requirement has already been satisfied by the President's directions, or, alternatively, whether the procedure can be done internally within State.

-If State must follow an inter-agency procedure, then questions arise regarding how detailed the request for authority will be, how many agencies the request should go to, and when should the request be made.

The Society of the
Plastics Industry, Inc.



1275 K Street, N.W., #400
Washington, D.C. 20005
(202) 371-5200

August 27, 1987

The Honorable John C. Whitehead
Deputy Secretary of State
Main State Department Bldg.
2201 C Street, NW
Room 7220
Washington, DC 20520

Dear Secretary Whitehead:

On behalf of the Society of the Plastics Industry, I am writing to request a meeting to discuss our concerns relative to chlorofluorocarbons (CFCs) and the draft protocol to the ozone convention. I would like for you to meet with representatives of our multi-billion dollar CFC-dependant industry segments whose businesses will be significantly negatively impacted by the imposition of restrictions on CFCs.

SPI member companies with a specific interest in the protocol include manufacturers of raw materials used in making rigid foam plastic insulation and flexible polyurethane foam, producers of certain foam insulation products made using CFCs, and polyurethane insulating spray foam contractors. While CFC-11, and to a lesser extent CFC-12, acts as an expansion or blowing agent during foam formation, its primary function in insulation products is to remain in the foam as an insulating gas. CFCs have a very low thermal conductivity which results in excellent resistance to heat transfer. CFCs have a number of other characteristics which make them highly desirable to use: they are relatively safe in the workplace as they are non-flammable and have very low toxicity characteristics. They are chemically inert and have excellent compatibility with other materials. Any proposed substitute must have all of these characteristics. It is estimated that use in the foam blowing industry represents approximately 30% of the CFCs produced in the United States.

CFCs are a significant cost factor (20%-30%) of many final products like foam plastic insulation. Any restriction on CFCs will increase their prices. For example, one of our member companies analyzed the impact of tripling the cost of the CFC blowing agent. The study concluded that 50% of the existing rigid polyurethane market for roofing and siding would be lost. Further, the study concluded that chemical substitutes would in general be more flammable and poor insulators. Therefore, any government action related to CFCs would have a major impact on our industry.

Foam plastics insulation products are used to insulate residential and commercial buildings and refrigerators. They are also used in refrigerated trucks and rail cars and for tank and pipe insulation. CFC blown foams have the highest R-values, or insulating ability, of all available insulation products. They thus provide an important contribution to the nation's energy-saving goals. These goals should be given special weight by the Department of State, particularly in light of current tensions in the Mid-East, which may increase the possibility of future oil shortages. Flexible polyurethane foam is the principle cushioning material used in furniture and automobiles, bedding, and carpet cushion. It is also used in textile laminates and for packaging. Various types of foam plastics are also used in the packaging marketplace. Finally, CFCs are also used to make fluoropolymers which are used in the electrical and electronics industry, in chemical processing equipment, and for non-stick coating.



PAST PERFORMANCE—FUTURE PROGRESS

It has been estimated that in the United States alone, chlorofluorocarbons are used by 5,000 businesses at 375,000 locations to produce goods and services worth more than \$28 billion a year. Further, it has been estimated that more than 715,000 jobs depend on CFCs. In addition to those in the plastics foam industry, CFCs are a critical as: coolants and refrigerants in the air conditioning and refrigeration industries, as cleaning agents for micro chips and other components of electronic equipment, as food freezants, as sterilants in hospitals and in the manufacture of medical equipment. Overall, CFCs make major contributions to the quality of life as well as substantial contributions to energy conservation efforts and to the national economy.

The following are specific issues of concern to SPI and the CFC-dependant segments of the plastics foam industry:

(1) SPI opposes reductions of CFCs beyond the contemplated freeze; SPI also believes that further reductions should be made only when scientific evidence warrant them and substitutes are economically and technologically feasible.

Debate continues about ozone depletion and the causes for the depletion, and there are many as yet unanswered questions. Nevertheless, and despite the scientific uncertainties, SPI does support a global strategy to control CFC emissions in the form of a worldwide freeze given the potential risks of ozone depletion. Existing data does not, however, suggest that there is imminent danger to health or the environment. Thus, severe curtailment of CFC production worldwide is not needed. Given this fact, as well as the usefulness of CFCs, the lack of available substitutes for many end-use applications, including most plastics foam applications and remaining scientific uncertainties about the role of CFCs in the atmosphere, SPI opposes further reductions of CFC use beyond the contemplated freeze.

(2) (a) If the United States agrees to reductions beyond a freeze, SPI's position is that the longest possible time frame should be allotted for users to adjust to any additional reductions of CFCs. At least 10 years are needed for many in the foam industry, particularly insulation manufacturers.

An extended time frame for implementation of any further reduction in CFCs is especially important for industries like the foam plastics industry where the critical path to chemical substitutes is a long one. A longer timetable will help reduce the economic impact of the reductions on user industries. SPI has estimated that at least 7 to 10 years of work will be necessary to ensure that chemical substitutes can be commercially used in the foam plastics product. Given that CFC producers themselves estimate that a 3-6 year period will be required for substitute CFCs to be made commercially available (with some producers advising that at least 7 years will be needed for full commercialization of alternatives), the time period for implementation of all phases of the CFC control strategy is a critically important aspect of the protocol.

b) We urge the State Department to be sensitive to the fact that regulations which are too stringent may stop development of CFC substitutes. Regulations that cause the collapse of businesses that are dependent on CFCs, such as foam blown plastics which represent a major market for CFCs, will diminish the market for substitute CFCs, thus reducing the incentive for producers to invest in substitute development. A realistic regulatory time frame is critical to reduced pressure on CFC prices which is essential for foam blown plastics businesses to survive until substitutes are available.

c) Delaying CFC rollbacks produces no significant increase in ozone depletion. An analysis using the ozone depletion models of the Chemical Manufacturers Association show a minimal, if any, impact on ozone depletion. Therefore, delaying the regulatory timetable is a sensible policy since it reduces the economic burden on industry, increases incentives for the producers to develop substitutes, and causes little or no increase in environmental effects.

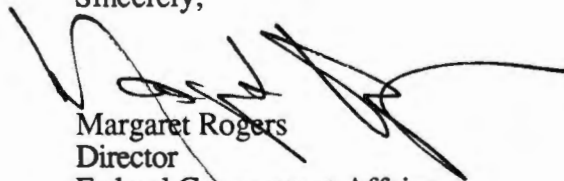
(3) If the United States agrees to CFC reductions beyond a freeze, SPI believes that the protocol should state that no additional reductions should be made unless agreed to by affirmative votes representing two-thirds of world consumption. (This recommendation is somewhat different from our written comment to Ms. Suzanne Butcher on August 21; it reflects our further consideration of this issue.)

(4) Since the U.S. unilaterally banned the use of CFCs in aerosols in 1978, we believe that some "credit" should be accorded to the U.S. as a result of this action. We understand that the issue of this unilateral action by the U.S. was not raised in the negotiations and we are puzzled by that fact. We further understand that the easiest, most environmentally significant step that could be taken would be a worldwide ban on CFC use in aerosols because the substitute technology has been available for many years, and reportedly according to the National Oceanic and Atmospheric Administration, such a worldwide ban would result in a 30% reduction in CFC emissions.

(5) We are aware that there are a number of outstanding issues to be resolved in the protocol. SPI believes that this resolution includes complex economic and technological feasibility issues that must be assessed in detail to fully understand the impact of any restrictions on CFCs. SPI therefore urges the State Department to seek out and consider the perspectives of all relevant government bodies including - The White House, the Office of Management and Budget, the Departments of Commerce, Energy, Interior, Justice; the U.S. Trade Representative and the Environmental Protection Agency - so that it can make the most informed decisions with respect to an international protocol.

We appreciate your consideration of our concerns and look forward to an affirmative response to our request for a meeting at your earliest convenience.

Sincerely,



Margaret Rogers
Director
Federal Government Affairs

MR/cmc

cc: Honorable Richard Benedick
Deputy Assistant Secretary for Environment,
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2201 C St., NW Rm. 7825
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The Honorable John C. Whitehead
August 27, 1987
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The Honorable John C. Whitehead
August 27, 1987
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The Honorable John C. Whitehead
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The Honorable John C. Whitehead
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August 13, 1987

Mr. Stephen Seidel
U.S. Environmental Protection Agency
Washington, D.C. 20460

Re: Preliminary Comments on the August 4, 1987
Presentation to SPI of CFC Regulatory Options

Dear Steve:

Thank you for your presentation on chlorofluorocarbon (CFC) regulatory options to The Society of the Plastics Industry, Inc. (SPI) on August 4, 1987. As you know, SPI is the major national trade association for the plastics industry. Members having a specific interest in proposals to regulate CFCs include producers of raw materials used in the manufacture of CFC-blown foams, producers of foam products using CFCs, along with polyurethane insulating spray foam contractors. During your presentation, you indicated that you would be interested in any reaction or response from our industry on the options you discussed. This letter provides you with some initial thoughts on the control options and suggests some possible modifications in the proposals as outlined to address some of those concerns. These comments of necessity are only preliminary, as SPI has not had the benefit of access to documents which outline the economic assumptions with respect to the Environmental Protection Agency's (EPA) control strategies. Accordingly, SPI is not in a position to recommend one option over another at the present time.

In this regard, while SPI did receive copies of an April 13, 1987 draft document entitled Preliminary Analysis of Costs and Benefits of Stratospheric Ozone Protection, you indicated that this document is still undergoing revisions. We understand that the background data and description of the assumptions made in the course of developing the April 13, 1987 draft (as well as the revised document itself) will be associated with the revised report. Although we have repeatedly been promised a copy of this revised document since early May, we have not yet received it. Given the Agency's exceedingly fast timetable for development of a proposal and preparation of a Regulatory Impact Analysis, SPI is at a severe disadvantage



Mr. Stephen Seidel
August 13, 1987
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as a result of its lack of access to the critical background information which has formed the basis of the EPA's current thinking on a proposed rule. Nevertheless, and with the understanding that SPI reserves the right to comment more extensively on the EPA's proposed CFC control options once we do have access to the background material, this letter will outline some of our thoughts on the strategies proposed.

Comments on EPA Action and the
Proposed International Protocol

Initially, SPI notes that, as you pointed out in our meeting, the current EPA action is occurring within the framework of 1) a court-mandated deadline for regulatory decisions and 2) international negotiations on protection of the ozone layer. The international negotiations are taking place while scientific research to 1) verify the fact and extent of global ozone depletion and 2) study the causes for ozone depletion continue. Significant scientific uncertainties remain regarding the role of CFCs and other substances or phenomena with respect to ozone depletion. These comments will not address the scientific issues. Despite scientific uncertainties, SPI has indicated that a freeze on CFC emissions worldwide, while it may cause hardships to CFC user industries and impose costs on the public at large, is a prudent step given the potential risks of ozone depletion. It does not appear, however, that further reductions at the levels being discussed in the international arena are necessary to protect the environment and health. SPI is therefore providing comments to the U.S. Department of State on the proposed protocol to address this and other concerns.

Although SPI does have some concerns about certain aspects of the draft international protocol, SPI supports an international approach to stratospheric ozone control. In SPI's view, unilateral action by the EPA would not only be ineffective from an environmental standpoint, it would be unduly burdensome to American industry. SPI therefore urges the EPA to avoid unilateral action. The EPA must adhere to the framework of an international agreement with respect to both the extent and timing of CFC control strategies.

Comments on the EPA's Assessment of the
Technological Feasibility and Economic Impact
of Control Strategies

You pointed out at our meeting on August 4, 1987 that the EPA is proceeding with its proposed stratospheric ozone

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control strategies under § 157B of the Clean Air Act. The Act specifically states that any regulations designed to control stratospheric ozone "shall take into account the feasibility and the costs of achieving such control" (emphasis added). Accurate information on the technological feasibility of control strategies and economic impact on users is thus a critically important element of the Agency's analysis required by law.

SPI has previously provided the EPA with specific information regarding the technological feasibility of certain control strategies for the foam blowing industry outlined by the EPA in its Preliminary Analysis of Costs and Benefits of Stratospheric Ozone Protection. It is not the intent of this letter to provide further detailed analysis on this score. We note, however, that some of the control options suggested for the foam plastics industry in that document can not be implemented, some have limitations due to constraints on process technology or product performance requirements, while virtually all will cost more than the Agency has estimated.

SPI will be providing additional information on the economic impact of CFC regulation on the foam plastics industry to the Agency. SPI has previously noted, however, that it appears that many secondary economic effects which could result from CFC controls, such as higher energy costs, have been ignored. Again, SPI's efforts to provide up to date information to the Agency on the economic impact of CFC controls on our industry have been seriously hampered by the failure of the Agency to provide it with the appropriate background documents.

Additionally, the Agency has assumed an excessively optimistic timetable for the development of substitutes. Many chemical substitutes are just now in the initial phase of toxicity testing. If testing indicates adverse toxicity, serious delay in the commercial availability of products made with substitutes will follow.

SPI strongly disagrees with your comments that the foam plastic industry will not suffer undue economic harm as a result of CFC controls. One key point in the EPA's April 13 Preliminary Analysis of Costs and Benefits of Stratospheric Ozone Protection is that a 30% reduction of CFC use can be obtained with a price rise of only about 7 cents a pound. Controls which are so inexpensive would in all probability have been adopted by now. While we realize that this information was contained in a "preliminary" document, SPI believes that

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the Agency has significantly underestimated 1) the feasibility of technological control options within the foam plastic industry, 2) the time frame necessary for the development of chemical substitutes suitable for most foam blowing applications, 3) the likely CFC price increases which will follow from controls, 4) the time necessary for modifying and/or developing process technology suitable in foam blowing operations using substitute CFCs, and 5) the economic impact on the foam plastic industry which will ensue as a result of CFC controls.

Comments on CFC Regulatory Options

You outlined at our meeting five possible regulatory control options which are currently being considered by the Agency. You indicated that the Agency has not selected one particular option, but hopes to begin "prioritizing" the five options in the course of developing a proposed rule. Since only a relatively sketchy outline of how these various options will operate in practice is available, SPI's analysis of these options is necessarily somewhat abbreviated. We are likewise unable to recommend any particular option at present. Instead, this letter points out a number of important considerations which SPI believes need to be assessed in more detail by the Agency as it reviews the options it is currently considering. Comments on the specific options outlined follow. As noted earlier, these comments reflect SPI's preliminary reactions only to some of the more obvious issues connected with each option.

1. Marketable permits.

In your presentation, you outlined a variety of "economic incentive" plans to control CFC use. The first involves a system of marketable production permits, auctioned annually by the EPA and open to producers and users alike. Under the scheme, as you explained it at the meeting on August 4, the total number of CFC production permits would be established by the "regulatory goal." Although this goal is not defined, it is SPI's view that the "regulatory goal" must be identical to the goals established in the international protocol.

As you explained it, all CFCs would be grouped based on the depletion potential of each. In other words, specific permits to produce, e.g., CFC 11, CFC 12, etc., are not contemplated. The ultimate cost of CFCs to users would presumably reflect the permit price as well as the premium likely to evolve by virtue of the scarcity imposed by limiting the total

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number of permits. Enforcement would focus on the small number of CFC producers; producers could not produce CFCs without the appropriate number of permits.

Apparently, the EPA believes that a system of marketable permits is an economically efficient means of achieving the regulatory goal. You suggested, for example, that the option "treats all firms equally." In SPI's view, government-imposed controls leading to scarcity of an important commodity will work inequitably. From an economic and technological feasibility standpoint - key issues required to be assessed by the EPA - a permit scheme will unduly penalize those for whom substitute chemicals or other reasonable control options are not available, particularly in the short term, as well as those with only limited ability to raise prices on final CFC-using products to reflect higher CFC costs.

Another significant drawback of the permit auction concept is that businesses will have no certainty for business planning purposes. Companies, including those who use CFCs and those who supply other critical raw materials to CFC using industries, need certainty for planning purposes. Business planning is frequently done yearly, and long-range "5 year plans" are developed as well. Permit auctions could disrupt these plans in the foam industry, depending on ultimate CFC prices. One consideration, for example, relates to building new facilities. For larger chemical companies, a year of planning and two years of construction could go into bringing a new facility on line suitable for manufacturing chemical products, including non-CFC materials used in foam plastics. If customers of such manufacturers can not obtain CFCs or reliable substitutes, they will not buy other materials used in foams.

You indicated that a production permit scheme will be economically efficient if firms have available to them "inexpensive" options to reduce CFC consumption. At the same time, you suggest that CFC price increases which will result from the imposition of a permit scheme are not likely to be great. SPI believes that price increases will be significant. Preliminary economic impact work prepared for the Alliance for Responsible CFC Policy, for example, suggests that a CFC production freeze alone could cause CFC prices to double in the near term.

Moreover, the Agency has failed to consider that some users are far better able to absorb even relatively modest additional CFC costs than other users. In the case of the foam plastics industry, for example, many industry members will

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likely cease doing business if CFC costs increase too much. The cost of CFCs represent a high portion of the cost of foam plastics products, but the ability to pass on that cost to consumers will be limited by factors which include the price of alternative products. In contrast, many CFC users could withstand far more significant price increases without switching to alternatives, implementing control strategies, or hurting their product markets, as the increased cost can be borne more readily by the consumer. Accordingly, the price at which various CFC users are likely to turn to alternatives will vary tremendously among different user groups. Thus, firms will not be treated "equally" as you suggest; firms in the foam plastics industry will likely face much higher economic losses than firms in other industries under a pure permit auction control strategy.

Another issue which has not been considered is the likelihood that hoarding or brokering of permits will occur. It is extraordinarily naive to think that speculators in the CFC permit market will not operate to drive up the price of CFCs, just as they do with respect to markets for other commodities. For a relatively modest investment by financial market standards it seems likely that speculators would take a substantial position in the CFC permit market, thus driving up permit costs. Hoarding and brokering of permits will force CFC users to in effect pay a fee on top of a permit fee, with additional wealth transfers going to speculators, not the U.S. Treasury. Additionally, those users manufacturing products where the cost of CFCs represent a high proportion of the finished product, i.e., whose applications are more price sensitive, would be particularly vulnerable to any marketplace activity designed to unfairly drive up the price of CFCs. SPI therefore urges the Agency to specifically prohibit speculation in the permit market should this control option be selected.

You indicated that the EPA's current thinking in connection with a production permit control option is to issue a total number of permits at a level determined to be consistent with the protection of the ozone layer, and to group all CFCs based on depletion potential. You also stated that in this way CFC producers and users could all participate in the CFC auction. As you know, the various CFCs are generally used in very different markets. A CFC permit auction will not assure the availability of CFCs for all end users. It is necessary, then, that the EPA assure the availability of CFCs for end uses, like foam blowing, where substitutes do not exist for many segments of the market. Otherwise, foam blowers will

face disproportionate economic losses under a permit auction scheme.

The principal issue of concern relative to a production permit control option is the vulnerability of users, like foam blowers, for whom CFCs represent a high proportion of the total cost of the end product in which the CFC is used. In order to ensure that implementation of a permit option does not work unfairly, some protection for such users is needed. This could be done in the form of a set-aside, i.e., dedicating a certain percentage of the available permits for the specific CFCs used in the foam blowing industry for foam blowing use, based on historical use data. User permit set-asides will also preserve the viability of these end use markets, thus giving producers incentives to continue to invest in the development of substitutes.

Alternatively, user permits, based on historic use in various end product applications, could be granted to all user groups. The total permit allocation could also include an assessment of alternatives, feasibility of controls, and the like. While you indicated that the Agency believes a user permit system would be administratively burdensome, the overriding concerns under the Act must be economic impact and technological feasibility. Administrative costs will also likely be imposed on producers and users under a permitting scheme. Those costs do not appear to have been considered. Administrative burdens on the Agency might be reduced if outside groups administer the permits to users.

One unresolved issue, of course, is the legal authority of the EPA to proceed with a production or user permit auction. You indicated that attorneys within EPA are scrutinizing the issue. Given the time pressures, SPI is unable to provide you with any detailed analysis on this score, but notes that this question must be resolved. Additionally, the financial burdens imposed by the permit system might operate to inhibit research and development efforts on the part of users seeking substitutes.

2. Emissions Fees

You explained that a second option under consideration by the Agency is the imposition of "emission" fees. In reality, these fees are not fees on emissions of CFCs, but, rather, are fees on the production and importation of CFCs. In this sense, styling this control option as an "emissions fee" is a

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fiction. If fees on emissions are established, then, logically, actual emissions must be the basis for the fees. In this regard, some credit or lower fee should be offered to users who destroy CFCs before they are emitted or who "capture" CFCs in such a way that they are not emitted.

Many of the same concerns outlined above in connection with the EPA's production permit control option apply to the production fee concept as well. In particular, a flat fee collected from producers who pass on the cost to users or consumers will operate unfairly with respect to users, like many in the foam blowing industry, for whom CFC costs are a high percentage of the cost of the finished product. The Agency's goal is to create economic incentives for users to reduce CFC consumption. That goal will only be satisfied if fees are set for each user group at a level designed to spur reductions in that use. This is because the level to which CFC prices must increase so that reductions will be taken, conservation efforts made, recycling technologies adopted, or substitutes used, will vary dramatically from industry to industry. Technological feasibility issues will therefore also come into play here and should be considered with respect to establishing production or emission fees.

Moreover, your own analysis indicates that adoption of this alternative as outlined will not assure that environmental goals are met. From this standpoint, it is difficult to understand why a production fee concept remains under consideration.

As with the production permit concept, the production fee proposal raises certain legal issues. Fees operate in a sense as a tax, and the EPA lacks authority to impose taxes. Fees which are high enough to discourage CFC use may also have the effect of limiting the user's available resources for research and development efforts into alternatives. A positive way to spur moves to alternatives would be to give CFC "credits" to those who use control technologies, purchase capital equipment designed for use with chemical substitutes, invest in R&D or the like. The EPA should also consider supporting legislative initiatives to give tax incentives to CFC users who adopt control strategies.

3. Production Quotas

Another option under consideration by the EPA is establishment of production quotas. Under this option, the EPA would allocate CFC production quotas to producers and importers

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based on historic market share. The producers themselves would benefit from any price increases resulting from CFC scarcity. Again, the Agency is currently considering establishing quotas for total CFC production. Producers will be able to trade among themselves based on the depletion potential of the various CFCs. Since specific CFCs are destined for different end-use applications, it might be more equitable for quotas to be established for different CFCs, with periodic review and adjustment by the EPA. Again, setting aside a certain proportion of CFCs for foam blowing use will help limit the disproportionate economic impacts likely to be faced by the industry.

Additionally, an overriding concern is the potential inequity of this control option vis-à-vis many in the foam plastics industry for whom CFCs are a high cost and substitutes only a long term solution. In addition to consideration of historic CFC production data, production quotas for individual CFCs could therefore take into account the ability of the specific end-user groups for each CFC to absorb price increases so as to operate more equitably. Alternatively, production set-aside could be one means of ensuring that vulnerable user groups are able to obtain the necessary CFCs.

4. Command and Control Regulations

Command and control regulations have traditionally been the means by which the EPA has regulated industries to achieve environmental goals. Under a command and control scenario, the EPA would target specific industries for CFC controls. You explained that the criteria for selection includes (1) the availability of controls/substitutes; (2) the number and size of firms affected; (3) the quantity of CFCs used; and (4) enforceability. SPI believes that the first criteria is the most important of those listed. Obviously, the economic impact of a command and control strategy will be largely dependent on the availability of controls and chemical substitutes.

Industries which have available substitutes would lend themselves more readily to command and control regulations than those which do not. With respect to the foam blowing industry, most segments of the industry are many years away from commercially available products using chemical substitutes. This is because many end use segments of the industry must undergo lengthy and often expensive tests for flammability, toxicity, and long-term performance (such as R-value in the case of foam plastic insulation). For example, building insulation products

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must be tested and accepted by building code authorities, a process which often takes years. Packaging foams also must frequently undergo stringent tests before these products can be used due to code and insurance regulations. Some segments of the foam plastic industry do have substitutes, but negative health and environmental impacts, with associated costs, could result from their use. Thus, command and control regulations imposed on the foam plastics industry could well have the effect of forcing many manufacturers out of business, particularly if imposed in the short term. The availability of substitutes in the long term will be of no use to such manufacturers.

Secondary economic impacts must also be considered. In this regard, the energy savings consumers realize by using foam plastic insulation represent an important aspect of the social utility of the product. Energy savings help to achieve other important environmental goals, such as reduction of acid rain. This type of social utility should be factored into the EPA's analysis as well.

5. Production Quotas Plus Product Bans/Controls

Under the so-called "hybrid" option, production quotas on CFCs are established based on the regulatory goal, and specific industries are then targeted for direct regulation. The same factors outlined above should be considered in targeting specific industries. While some industries may be affected and others may not, if the industries who are technologically and economically able to switch to substitutes are targeted, the overall result might well operate more equitably than some of the other options currently under consideration by the Agency. In addition, overall CFC price increases may be minimized.

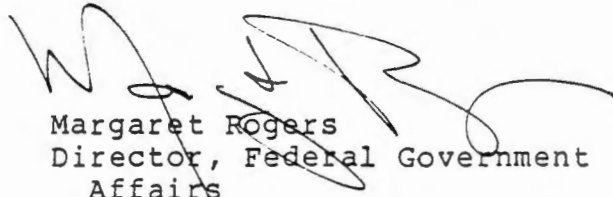
Conclusion

You have been provided with SPI documents relating to extruded polystyrene rigid foam insulation boardstock and polyurethane and polyisocyanurate insulation. We suggest that these documents be consulted as further background to support the questions SPI has raised regarding the uncertain viability of substitute CFCs, both technically and economically. The issues of substitute availability, cost of CFCs in the interim, and adequate time to make the transition given the kind of testing yet to be done are the overriding concerns for our industry.

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We hope that our preliminary comments on the options you outlined are useful to you. We look forward to a continuing dialogue with the EPA on this matter. We again reiterate, however, our need for the relevant background documents to enable us to engage in a meaningful exchange of ideas with the Agency.

Respectfully submitted,



Margaret Rogers
Director, Federal Government
Affairs
The Society of the Plastics
Industry, Inc.

THE WHITE HOUSE

WASHINGTON

August 28, 1987

MEMORANDUM FOR NANCY J. RISQUE

FROM:

RALPH C. BLEDSOE 

SUBJECT:

Stratospheric Ozone - Process Issues

The following are issues related to the final negotiating sessions in Montreal September 7-11, and the follow-on signing conference September 14-16, 1987. As you know, the head of the negotiating delegation is Richard Benedick of State, who will be joined on the delegation by J.R. Spradley of Commerce, Tom Hookano of Justice, Bob Reinstein of USTR, Ted Williams of Energy, and Bill Long, Eileen Clauson, and Jim Losey of EPA, with John Hoffman of EPA as an observer.

The signing delegation will be headed by Lee Thomas, with some of the earlier delegates remaining on the team. Congressional participation has been invited, but no response has been received as of this date.

The key issue is how to bridge between the two delegations. The basic communication will, of course, be between Benedick and Lee Thomas. However, there are several other aspects that raise these questions.

Whom does Benedick consult in Washington during the negotiating session, if he has questions or needs guidance, including interpretations of the President's decision? He would like a White House contact, in addition to Lee Thomas.

To whom should he transmit the final protocol drafted at the negotiating session (for assessment of acceptability and adherence to the President's decision)? Again, he would like to communicate it to the White House for action, in addition to transmitting it to Lee Thomas as head of the signing delegation.

There are other questions regarding how any differences between the final draft protocol and the President's decision will be coordinated with other Federal agencies, if this is needed. Also, Lee Thomas may want some guidance about his signing authority, especially if he is aware of differences between the final draft protocol and the President's decision. The State Department's Form 175 process was designed to handle the signing authority problem.

THE WHITE HOUSE

WASHINGTON

August 28, 1987

MEMORANDUM FOR NANCY J. RISQUE

FROM:

RALPH C. BLEDSOE



SUBJECT:

Stratospheric Ozone -- Negotiation Issues

In anticipation of the upcoming international stratospheric ozone negotiations, you have asked us to identify any differences between the President's instructions and the draft protocol, and the important concerns of the interested Federal agencies.

There are two potential differences between the President's negotiating instructions and the draft protocol. Each potential difference relates to the timing of control measures. First, the President instructed the U.S. delegation to seek a freeze at 1986 levels on production/consumption of Halons 1211 and 1301 to take effect one or two years after entry into force. Article 2 of the draft protocol would require a freeze on production and imports of Halons 1211 and 1301 three years after entry into force. Second, the President instructed the delegation to seek a second phase CFC reduction of an additional 30 percent from 1986 levels which would occur about eight years after entry into force. The draft protocol includes a second phase 30 percent CFC reduction which would occur either eight or ten years after entry into force.

Participation in the protocol is an important issue for the interested Federal agencies. Recognizing that 100 percent participation by producing/consuming countries is probably not achievable and that there will be strong legislative and judicial pressure for unilateral action in the absence of an international agreement, the goal is to find the optimal percentage of required participation for entry into force. The President's instructions state that this percentage should be well above a majority of the major producing/consuming countries. This percentage should be high enough that the trade restrictions will encourage non-parties to join, yet low enough that the protocol will enter into force.

The draft protocol provides for entry into force upon ratification by countries representing at least sixty percent of 1986 global production. To date, the U.S. position has been that the protocol should enter into force upon ratification by countries representing at least 80 percent of global production. EPA and State delegation members are assessing the costs and benefits of alternative participation percentage requirements.

There are other issues of concern to the interested agencies that are currently under discussion in the bilateral negotiations and that will be discussed in Montreal. Briefly, these issues include:

- * **The Control Formula:** The draft protocol contains different formulas for control measures -- e.g., production and imports versus production and consumption.
- * **Treatment of the EC as a Unit:** The EC has proposed that it be treated as a single unit for purposes of compliance with the control measures. This would enable some countries to increase emissions if offset by decreases in other countries.
- * **Trade Provisions:** The draft protocol contains two alternative trade proposals. Both proposals ban the export of controlled substances to non-parties. One proposal would also ban exports of products containing the controlled substances to non-parties. The other proposal would "ban or restrict" exports of products containing the controlled substances to non-parties.
- * **Failure to Comply:** The Department of Treasury noted that the draft agreement does not contain provisions for treatment of participating countries which fail to comply with the protocol requirements.
- * **Effect on Low-consuming Countries:** Treasury noted that not allowing increases in exports to low-consuming countries may discourage participation by developing countries.

The White House Counsel's office is examining the Circular 175 issue and is identifying the remaining procedural requirements for the treaty process. They believe there are ways to meet the State Department's internal requirements without another public inter-agency process. We will meet with you as soon as we hear from Counsel.

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THE WHITE HOUSE

WASHINGTON

August 26, 1987

Stratospheric Ozone

* Montreal Meetings:

-September 8-11, Final Negotiations;

-September 14-16, Conference of Plenipotentiaries;

-U.S. Delegation will include representatives from State, EPA, Justice, Energy, USTR, and possibly Commerce. Richard Benedick will lead the delegation for the final negotiations, and Lee Thomas will lead the delegation at the Conference of Plenipotentiaries.

* Important Issues in the Draft Protocol Text:

- Inclusion of the Halons (Article 2);

- Timing of the reductions (Article 2);

- Draft contains two alternative trade provisions (Article 4);

- Entry Into Force (Article 15) -- tentatively provides for entry into force upon ratification by countries representing at least 60 percent of 1986 global production. Benedick needs guidance on the desired minimum participation. Trade provision is relevant to participation.

* Circular 175 Process:

-State believes it must adhere to its internal requirements calling for an inter-agency Circular 175 authorization to sign the protocol.

-White House Counsel and State Department Solicitors are looking at whether the internal State requirement has already been satisfied by the President's directions, or, alternatively, whether the procedure can be done internally within State.

-If State must follow an inter-agency procedure, then questions arise regarding how detailed the request for authority will be, how many agencies the request should go to, and when should the request be made.