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RELEASE OF DIPLOMATIC NOTES
TO THE UNITED STATES
CONCERNING NIAGARA RIVER POLLUTION

-- The Secretary of State for External Affairs,
Dr. Mark MacGuigan, today released the two attached
diplomatic Notes presented to the United States on April 15
and November 28, 1980, concerning Niagara River Pollution.

The Embassy of Canada presents its compliments to the Department of State and has the honour to refer to the Embassy's Note No. 70 of February 15, 1980, and the Department of External Affairs' Note GNT-2072 of December 14, 1979 which expressed concerns of the Government of Canada related to continuing degraded water quality in the Niagara River, and its consequences for the health and property of Canadians.

Concerns about the low water quality of the Niagara River have been expressed over a number of years by the International Joint Commission and its Water Quality Board. The situation of the River has been stressed further by the failure of the carbon filtration system at the Niagara Falls, New York Sewage Treatment Plant. Continued discharge of this effluent, and the continued stress to the River, make even more timely the resolution of the funding difficulties which, it is understood, are delaying the commencement of efforts to repair the carbon filtration system, as mentioned in the Embassy's Note of February 15.

Action to implement the discharge permit approved recently for SCA Chemical Waste Services Inc. into the Niagara River at Porter, New York, adds to the previously expressed Canadian concern, by allowing a further increase in the total pollutant leading to the river. This is particularly so when seen against the background described above of the long term problems of pollutant loadings in the Niagara River and the stress to the River through the failure of the Niagara Falls Sewage Treatment plant to process adequately the effluent it receives.

In light of this general situation, the Canadian Department of the Environment and the Ontario Ministry of the Environment have reinforced their regular water quality surveillance and monitoring programmes with special efforts designed to look at a broader range of parameters for general water quality in the Niagara River. Data from these monitoring programmes is now under intensive examination by Canadian authorities. Once the analysis is complete the Canadian officials would welcome an opportunity to discuss the data with their United States counterparts.

Under these circumstances, the Government of Canada seeks the assurances of the Government of the United States that in any and all activities permitted on the United States side of the river by any United States jurisdiction it will respect the obligations undertaken in Article IV of the

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Boundary Waters Treaty of 1909, that boundary waters shall not be polluted on either side to the injury of health or property on the other.

The Embassy of Canada avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, April 15, 1980.

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The Embassy of Canada presents its compliments to the Department of State and refers to the Embassy's Note No. 141 of April 15, 1980 and the Department of State's reply of May 21, 1980, concerning water quality problems in the Niagara River and their consequences for the health and property of Canadians.

The Embassy is pleased to transmit a summary of the Environmental Baseline Report on the Niagara River prepared by Environment Canada and the Ontario Ministry of Environment for the Canada-Ontario Review Board on Water Quality and will forward the Report next week. This Report summarizes Canadian data on water quality (suspended sediment), bottom sediment and biota collected in the Niagara River between 1975 and 1979. The Report states that concentrations of total DDT, PCB's, aldrin/dieldrin, endosulfan (thiodan), lindane and cadmium exceeded the specific objectives of the Canada-U.S. Great Lakes Water Quality Agreement at certain stations in the lower Niagara River on at least one occasion during 1979. In addition, other synthetic chemicals, for which no specific water quality objectives have been developed, were also detected.

As many of the chemicals detected are frequently found in association with incompletely treated wastes from industries operating in the vicinity of the Niagara River, these data give rise to additional and specific concerns on top of those which were indicated in the Embassy's Note of April 15, 1980.

In particular, the Government of Canada is concerned that serious operational problems are still being experienced at the Niagara Falls (N.Y.) Waste Water Treatment Plant and that agreement does not appear to have been reached between EPA and Niagara Falls officials to proceed with rehabilitation of this plant. The Embassy wishes to reiterate the Government's concerns that there may exist a continuing risk to the health and property of Canadians and seeks assurances that urgent steps will be taken to resolve any administrative difficulties which might further delay the rehabilitation of the Niagara Falls Waste Water Treatment Plant.

Secondly, while U.S. agencies have provided general information regarding the operations of SCA Chemical Waste Services, Inc., and their possible impact on the water quality of the Niagara River, recent disclosures reported in the Canadian press relating to past actions at the site give rise to further concerns. The Canadian authorities wish to request further information on this matter.

The Embassy welcomes the expression of willingness in the Department of State's Note of May 21 to cooperate in seeking a solution to these problems. The Embassy would be pleased to discuss the findings of the Report and any other information regarding pollution sources to the Niagara River.

The Embassy of Canada avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, November 28, 1980.

SCA CHEMICAL WASTE SERVICES, INC.

Background

SCA operates an industrial waste treatment and disposal facility in the Town of Porter, Niagara County, New York. New York State Department of Environmental Conservation (DEC) issued a National/State Pollutant Discharge Elimination System (N/SPDES) permit to SCA effective 4/7/78 and expiring on 11/16/79. However, the conditions of the expired permit remain in effect pursuant to the New York State Administrative Procedures Act and 40 CFR 122.12(b). The permit allowed discharges into the Niagara River and Four Mile Creek. The permit contained very stringent limitations and other requirements. In 12/78 SCA requested a permit modification to allow a greater discharge of pollutants to the Niagara River. A five-mile pipeline to convey the effluent to the Niagara River was also proposed. DEC issued a public notice of a proposed modification on 2/15/79. Because of extensive public comment, a two phase public hearing was scheduled by DEC. A decision on Phase I was issued by DEC on 1/14/80. Highlights of the decision were to recommend approval of the pipeline and to recommend a maximum flow limit of 1.0 MGD. The Phase I decision was incorporated into the permit by modification dated 2/3/80. Phase II of the hearing is scheduled to commence on 4/23/80. It will address the requested modification of effluent limits for parameters other than flow as well as other matters not directly related to the N/SPDES permit (e.g., operating permit for the facility and proposed construction of a new secure landfill).

EPA Action/Position

EPA commented on the NYSDDEC draft permit modification by letter dated 3/15/79, concurring with the essence of the proposal. EPA Region II has advised the U.S. Army Corps of Engineers, which is presently reviewing an application from SCA for a permit to construct the pipeline and outfall structure, that EPA has no objection to the construction permit provided that no blasting or dredging is done during the month of June in order to minimize the effects on fish spawning.

NYSDDEC granted this N/SPDES permit modification under the authority delegated to them by the EPA, consistent with the Clean Water Act. EPA exercising its review authority found the draft permit modification issued by NYSDDEC contained more stringent requirements to protect the environment than the draft permit modification. Based on these stringent requirements to protect the environment found in the permit modification and the modification's conformance with Federal and State laws, EPA concurs with NYSDDEC's action on this issue.