



ADVICE TO COUNCIL NO: 03-03

Re: Proposed Operational Plan for the Commission for Environmental Cooperation (CEC) of North America for 2004–2006

The Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC) of North America;

IN ACCORDANCE with Article 16(4) of the North American Agreement on Environmental Cooperation (NAAEC) which states that JPAC "may provide advice to Council on any matter within the scope of this agreement [...] and on the implementation and further elaboration of this agreement, and may perform such other functions as the Council may direct";

HAVING discussed an overview Operational Plan for the Commission for Environmental Cooperation (CEC) for 2004–2006 with the public and Secretariat staff in a plenary session held during JPAC Regular Session 03-03 on 3 October 2003, in Montreal, Canada; and

HAVING later received the full, proposed CEC Operational Plan for 2004–2006, along with a covering memo from the Executive Director outlining some specific proposals for achieving a balanced budget.

SUBMITS the following observations and comments for Council's consideration:

First, JPAC is very supportive of efforts for the CEC to become more strategic in its planning, streamline the presentation format and continue to develop and expand partnerships and leverage efforts to ensure that the work of the CEC is value added. Additionally, we are pleased that suggestions from members of the private and public sectors have been incorporated. These are all matters discussed in past JPAC Advice to Council on program planning.

Further, on 21 October 2003, JPAC received a document entitled "Reinforcing Strategic Planning at the CEC," which details a path forward for developing a strategic plan for the CEC. While much of this document seems to have merit, we are confused by its appearance at this time and with the timeline that envisages a final plan being developed in advance of Council having considered the results of the 10-year Review of the NAAEC provided by the independent committee.

In this context, it is very difficult for JPAC to digest these very dense and complex documents and constructively comment, having received these documents after our regular session. For this reason, we are providing comments primarily on the 'big picture' as described in the Executive Summary of the full, proposed Operational Plan for 2004–2006.

The Four Goals

We generally agree with the three first goals as they are expressed, however, we have comments about how they are later articulated in this document.

Goal 1: To foster understanding of the state of our environment, and its relation to the economy and trade in North America

This goal is at the heart of the CEC's mandate. We feel, however, that the trade and environment nexus is not adequately addressed in the Highlights and Planning Context. Our understanding of this core CEC mandate is that developing a solid, science-based understanding of the relationship between environment, economy and trade is not for its own sake, but specifically to assist governments and others in identifying ways to support environmental protection during trade liberalization and anticipated economic growth, develop mechanisms to promote environmental protection in this context and help avoid conflicts between trade and environment.

In addition, we emphasize that this document highlights the need to “explore how cooperation with the FTC can be advanced outside of the NAAEC Article 10(6) group or in a more productive way.” The recent Ministerial Trade Statement of October 2003, recognizing the CEC Council's and JPAC's “important input on the organization of these consultations” and on the investment chapter's investor-state dispute settlement process (NAFTA Chapter) is good example how cooperation can make a difference. We are concerned, however, that the NAAEC Article 10(6) working group, at a senior level, has not started to discuss “a proposed agenda [...] on crosscutting trade and environment issues,” as promised in the CEC Ministerial Statement of June 2003.

Goal 2: To act as a catalyst to improve domestic law and policy, and enhance environmental enforcement and compliance across North America

We strongly support the proposal to link the NAAEC Articles 14 and 15 process with enhancing environmental enforcement and compliance. JPAC has devoted much time to this process and, in its Lessons Learned Report on Articles 14 and 15, urged Council to develop a follow-up mechanism for factual records. We very much agree with the statement that the information contained in factual records may assist the NAAEC Parties and the public in taking action they deem appropriate.

Goal 3: To mobilize international cooperation to resolve critical North American environmental issues.

We notice that mention of NAAEC Article 10(7) on transboundary environmental impact assessment is not included in the document. We suggest adding this NAAEC-specific obligation under this goal. We now have a proposal from Mexico on hand—the first sign of progress in several years. JPAC has produced several Advice to Council on the importance of concluding an agreement on transboundary environmental impact assessment. It is inappropriate to consider removing our capacity to respond and work with this proposal and beyond.

Goal 4: To provide a forum for public dialogue and participation concerning environmental issues of common concern in North America

JPAC does not agree with its 'location' in the Operational Plan. The Executive Summary rightly recognizes that JPAC is one of three principle partners of the CEC and properly characterizes its mandate as advising Council on any matter within the scope of the NAAEC.

The Operational Plan then relegates JPAC to Goal 4: To provide a forum for public dialogue and participation concerning environmental issues of common concern in North America. This reflects a fundamental misunderstanding of the role of JPAC in the CEC. We seek public input, but are not bound by this input when developing our Advice. Creating opportunities for the public to have input into specific topics is a tool for JPAC—as it is for the Council and the Secretariat—not its reason for being.

As a group of 15 volunteer citizens, JPAC has to be seen as an independent arm of the NAAEC. We are neither employees of the Secretariat nor accountable to our governments. JPAC's strength is in this independence. JPAC's responsibility is to 'keep the process honest and transparent,' in terms of ensuring that the activities of the CEC do not wander from the objectives of the NAAEC and that obligations contained in the NAAEC are met.

We forcefully promote the engagement of the public in the activities of the CEC because this is clearly one of the objectives of the NAAEC—making the CEC unique among international organizations. For that reason, JPAC feels very strongly that public participation must be horizontally integrated into the Operational Plan. Public participation is a fundamental, obligatory component of the CEC process—not a goal.

The North American Fund for Environmental Cooperation (NAFEC)

JPAC is unanimous in its support for the continuation of the NAFEC. The proposal to eliminate the fund has also elicited a very strong response from the public, including former JPAC members.

The decision to eliminate this program must be analyzed through the evaluation done in 2000, which has recognized the value added by NAFEC. It has created an important link between the activities of governments and the Secretariat and the citizens of North America. NAFEC contributes substantively to fulfilling the CEC's mission of: "facilitating cooperation and public participation to foster conservation, protection and enhancement of the North American environment."

Last year, JPAC recommended that the NAFEC Call for Proposals for 2004 focus on community-based projects related to management of freshwater. It is exactly in accordance with the CEC Ministerial statement of June 2003, recognizing that:

The management of freshwater is an issue of global concern. [...] We have now asked the Secretariat to collect and facilitate the sharing of case studies that demonstrate national and *local* experiences and best practices on water quality.

Finally, we hope that the Council will provide the Secretariat with a clear direction supporting the permanency of NAFEC.

The Involvement of Indigenous Peoples

This is an issue that has preoccupied JPAC for some years. We were very encouraged to receive a draft report from the Secretariat in early October 2003 exploring options for improving the involvement of indigenous peoples in the CEC. We also note that the draft Operational Plan acknowledges the need to enhance their involvement, however, no details are provided or activities associated with how this will be achieved. We caution that it is not simply a question of having indigenous peoples attend meetings from time to time. Indigenous peoples and their concerns must work their way into the planning process, identification of priorities to improve understanding of, and design responses to, the environmental impacts of NAFTA on their lands and societies. We expect to be kept abreast of this issue as it evolves within the Secretariat.

The Ten-year Review of the NAAEC

JPAC is pleased to see the Operational Plan characterized as transitional in the context of the ten-year review now underway. What is not clear, however, is the mechanism that will be put in place for how this Operational Plan will be adjusted to take into account those recommendations from the Ten-year Review of the NAAEC that Council chooses to pursue.

Financial Situation, Budgeting and Staffing

Without benefit of the details of the current budget situation at our last JPAC's regular session, and how it arose, JPAC is not in a position to comment on the situation and recommended solutions other than to make some general observations.

- International organizations operate with the reality of currency fluctuations. Indications are that the situation of the US dollar relative to the Canadian dollar will not improve in the foreseeable future. Steps should be taken to stabilize the budget from 2004 onwards. JPAC recommends that the annual inflation rate be taken in consideration in the preparation of the budget.
- A 10 percent cut across the programs and other activities is not appropriate. A more effective approach would be to establish priorities and then assign budgets. Further, without a detailed analysis of the impacts, such an approach risks reducing the effectiveness of some programs below acceptable thresholds. We have no evidence that such an analysis was done. We also notice that the proposed budget in fact varies widely in the application of budget reductions.
- Public participation is a NAAEC obligation and should be the last area to be reduced.
- JPAC recommends that the annual inflation rate be taken in consideration in the preparation of the budget.
- Freezing staff positions (with the real possibility of elimination) is a common budget reduction technique, however, again, this should not be proposed without careful analysis of the impacts on the viability of the programs. We note that the programs and activities themselves seem not to have been modified.

- This is the time to take a hard look at each of the programs, in terms of their continuing applicability to the objectives of the NAAEC, and then take the required decisions in the context of budget realities.
- JPAC does not support the proposal to eliminate funding for the cooperation with the NAFTA Free Trade Commission that is specified by Article 10(6), and transboundary environmental impact assessment under Article 10(7). These are both obligatory, not discretionary activities.
- Regarding the budget line related to planning and evaluation, we would like to get more information about this item.
- Within the programs, there are economies to be made in travel, including paying travel expenses for government officials through the CEC's budget, meeting support and report production.

Approved by JPAC
12 November 2003