



ADVICE TO COUNCIL NO: 04-03

Re: Review of the Operation of Council Resolution 00-09 on Matters related to Articles 14 and 15 of the Agreement

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 received and reviewed draft versions of two documents developed by Council: *View of Council on Resolution 00-09 on matters related to Articles 14 and 15 of the Agreement* and *Report on the Council Review of the Operation of Council Resolution 00-09*;

NOTING Council’s efforts to coordinate with JPAC to improve communication; and

APPRECIATING the thoroughness of the review and Council’s reflection on the usefulness of Council Resolution 00-09 on matters related to Articles 14 and 15 of the Agreement.

JPAC provides the following commentary and recommendations:

Over the years, JPAC has consistently advocated in support of the Citizen Submissions Process under Articles 14 and 15 of the NAAEC. Our attention has focused on issues related to transparency, improving public participation and maintaining the independence of the Secretariat. The history of these efforts is well summarized in the draft report referred to above. The recent report of the Ten-year Review Committee has also reviewed the citizen submissions process and found that while the process fulfils a useful role, improvements in its effectiveness continue to be required.

It is clear that Council intends to maintain Council Resolution 00-09 “[so] that any party, the Secretariat, members of the public through the JPAC of the JPAC itself may continue utilizing the process in order to raise issues concerning the implementation or further elaboration of Articles 14 and 15 of the Agreement.”

JPAC supports this decision, believing that the intent of the Resolution was to improve public access and participation in the evolution of the citizen submission process. At the same time, under Article 16(4) of the NAAEC, JPAC continues to take the view that supporting this process does not replace JPAC's authority to operate outside of the context of the Resolution should it choose to do so. As such, it is JPAC's intention to assess, on a case-by-case basis, the opportunities afforded by Resolution 00-09 as well as its authority under Article 16 of the NAAEC for addressing implementation issues and select the most appropriate option.

At the same time, JPAC will continue to advocate for improved effectiveness of the citizen submissions process in an effort to re-establish public confidence in this very important instrument for fostering the vigorous enforcement of environmental laws so that "all three of the NAAEC countries can enjoy the twin benefits of expanded trade and healthier environments."¹ In this spirit, JPAC wishes to advise Council of its intention to conduct its own review of the operation and effectiveness of Council Resolution 00-09 in 2006.

In support of this view, JPAC recommends that:

1. When making decisions related to Articles 14 and 15, Council acts within the spirit and intent of Council Resolution 00-09 and continues to coordinate with JPAC to improve public participation, transparency and overall communications.
2. When making decisions concerning factual records, Council makes every effort to ensure that the independence of the Secretariat is maintained.

Approved by JPAC
23 August 2004

¹ Joint Public Advisory Committee, Lessons Learned: Citizen Submissions under Articles 14 and 15 of the North American Agreement on Environmental Cooperation, Montreal, 2001.