

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF INTERNATIONAL AFFAIRS

December 6, 2002

Mr. Jon Plaut
JPAC Chair for 2002
Commission for Environmental Cooperation
393, rue St-Jacques ouest, bureau 200
Montréal (Québec) H2Y 1N9

RE: Response to recent JPAC Advice to Council (letters dated April 22, July 4, September 10, and November 12, and advice 01-09, 02-03, 02-04, 02-05, 02-08, and 02-09)

Dear Mr. Plaut,

On behalf of the Council, the Alternate Representatives thank the Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC) for its most recent advice and related follow-up letters to the Council which cover a range of topics, as outlined below. We appreciate the time and effort dedicated by the JPAC to deliberate and deliver such valuable advice to the Council. On behalf of the Council, we offer the following in response to your most recent correspondence (letters dated April 22, July 4, and September 10) and advice (01-09, 02-03, 02-04, 02-08, and 02-09).

Articles 14-15

Having again carefully considered the JPAC's request regarding conducting a public review of the public submissions process "scope" issue, the Council continues to support such a review upon the completion of the four relevant factual records (SEM-97-006, SEM-98-004, SEM-99-002, and SEM-00-004). As expressed in the Council response letter dated February 11, 2002, as well as during the June Council Session, the Council believes that to move forward in this manner is the most appropriate course of action and will provide the greatest value added. The Council, based on information provided by the Secretariat, expects the four factual records to be completed by early 2003.

Following the JPAC-Council discussions that took place this past June, the Council again reviewed the issue of factual record monitoring and follow-up. Again, the Council agrees with the JPAC that in some instances a factual record may present information warranting attention by a Party. We are cognizant of the fact, however, that under the terms of the NAAEC, the Article 14-15 submissions process concludes with the preparation and potential publication of a factual record and, as such, any follow-up which a Party might choose to pursue is a domestic policy matter. As previously stated in Council letter dated June 14, 2002, the Council would anticipate supporting a decision by a Party to take follow-up action.

With respect to the Secretariat's update report on Public Access to Government-held Environmental Information, we note that during the 2001 Council Session, the Council recognized the potential use of this report for Mexico in the context of Mexico's developing domestic legislation involving information disclosure. Although the Parties have not yet received the final report, the Council has reviewed the draft document and recognizes that this report could be a useful tool for the public in understanding the domestic laws of the Parties in the area of government-held environmental information disclosure. The Council again emphasizes its view that a Party should not withhold information unless consistent with the NAAEC, in accordance with the domestic laws of a Party, and to the extent possible and appropriate.

Finally, when the Council begins to discuss the review of the operation of resolution 00-09, we will, as requested by the JPAC in your July 4 letter, provide information to the JPAC on how we intend to conduct this review, including consideration of your request to conduct a public review of the operation of resolution 00-09.

NAFTA Chapter 11 and 10th Anniversary of NAFTA/NAAEC

Council appreciates the thoughtful recommendations made in JPAC advice 02-04 and 02-09 regarding the NAFTA Chapter 11 and 10th Anniversary of the NAFTA/NAAEC. In response to the first two recommendations made in JPAC Advice 02-04, we will instruct the Secretariat to post the most recent summary and all future summaries of the meetings of the Article 10(6) Environment and Trade Officials Group on the CEC website. In order to facilitate JPAC input, we also propose that when the Article 10(6) Group convenes, it hold a joint meeting with JPAC representatives (i.e., Article 10(6) Group meetings would be comprised of two sessions - one with the JPAC and another among government officials only.

In response to the recommendations made in JPAC Advice 02-09, please note that multiple agencies from all three countries, including environmental agencies, participate in the NAFTA Chapter 11 Experts Group, which is led by our trade counterparts. The Parties will carefully consider the suggestions made in Advice 02-09 with regard to the proposed joint meeting between the CEC and the NAFTA Free Trade Commission (FTC). The Council continues to explore ideas for agenda items and deliverables, as well as the timing of such an event. We are currently consulting with our trade counterparts about facilitating public input into the NAFTA Chapter 11 Experts Group. We are actively reviewing other JPAC recommendations and will act on them, as appropriate. We are pleased that work on both the CEC Symposium on Environment and Trade and a possible Environment and Trade Ministerial meeting are underway. Once the details are finalized regarding the JPAC public workshop on Chapter 11, scheduled for March 2003, the Council will consider the appropriate governmental representation.

Finally, we welcome JPAC's interest in the retrospective of NAFTA and NAAEC which we plan to undertake by 2004 in collaboration with JPAC. Once we have outlined a process for carrying out this endeavor, we would be pleased to share this information with the JPAC.

World Summit on Sustainable Development

We appreciate the JPAC's interest and concern, mentioned in the JPAC letters sent on July 4 and November 12, regarding the representation of the CEC at the World Summit on Sustainable Development. As you know, there was much discussion amongst all parties in the months leading up to the World Summit, to see whether a side event or document could be produced which would demonstrate the CEC example in a valuable way. Unfortunately, the tight timeframe, combined with other considerations inherent in a global conference of such scope, made it impossible to create a side event or document which effectively reflected the positions and priorities of the three countries in time for the Summit.

The three countries did, however, discuss our joint policy goals and work together effectively for a successful conclusion to the Summit. As a result, Canada, Mexico, and the United States joined together with a number of other countries and organizations to support partnerships to address children's environmental health, indoor air pollution, and urban air pollution from motor vehicles. Partnerships were a significant result coming out of the Summit, and, as CEC partners, we were pleased to work together on these deliverables.

In regard to your request to represent the CEC in US EPA side events, which is mentioned in the JPAC letter, the US EPA did ultimately hold several side events to launch specific partnership deliverables that it was leading or supporting, on topics such as children's environmental health,

sound science, indoor air pollution, and urban air pollution from motor vehicles. The US EPA did not launch any deliverables on the issues you raised in that letter, and thus did not hold any side events addressing these issues.

Executive Director

In regard to the search for the next Executive Director of the CEC, mentioned in JPAC Advice 02-05, the Council wishes to thank JPAC for its contributions to the review and development of the position's statement of qualifications, and for providing important information to the consulting firm assisting the Council in this search. We welcome any additional information you may wish to provide, including the names of interested candidates. The Council looks forward to concluding this search as soon as possible.

The Parties will respond to your advice on SMOC (02-08) and Freshwater (02-10) in a separate letter. The Parties are still consulting on your advice regarding the 2003-05 Program Plan (02-11), and will reply to you when that response is ready.

In closing, the Council appreciates the suggestions forwarded by the JPAC on several CEC issues of importance and looks forward to future letters of advice.

Yours sincerely,

[Original signed]

Judith E. Ayres
Alternate Representative for the United States
Assistant Administrator

cc: Norine Smith
Olga Ojeda Cárdenas
JPAC Members
CEC Acting Executive Director