

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 JPAC Advice to Council 02-08 (Sound Management of Chemicals Program)

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 advice to Council 02-08. The Advice given by the JPAC is a very important element in ensuring that CEC programs, and in this case the Sound Management of Chemicals (SMOC) Initiative, reflect the interests and concerns of stakeholders. We appreciate the thoughtful consideration and effort of the JPAC in developing and delivering Advice 02-08 on this program. On behalf of the Council, we offer the following response to that Advice.

Capacity Building and Education Opportunities

We agree that there are opportunities to strengthen and broaden the capacity-building and education components of the SMOC program. As these important elements are already built into SMOC as a result of decisions taken by the SMOC working group in recent years, it will not be necessary for SMOC to make any institutional changes, but rather to seek ways in which to strengthen and publicize these activities, as well as the opportunities for public awareness and participation. We will actively pursue this goal, and welcome your further input on such matters as defining target audiences and ensuring that the communications and educational efforts have the desired effects.

Stakeholder Involvement

Here again, we are in full agreement with JPAC that active stakeholder involvement is critically important. Accordingly, a consultative process has been institutionalized since shortly after the creation of SMOC, to ensure that a public meeting is held to discuss the SMOC Working Group agenda items. The outcomes of the public meeting are discussed and taken into account at the following day's Working Group session. Recommendations made at the public meeting are seriously considered in arriving at decisions made by the Working Group and in formulation of recommendations it makes to the CEC Council. SMOC does actively solicit participation of NGOs, industry, academia, and representatives of indigenous populations on its task forces. The extent to which representatives of these constituencies participate in ongoing SMOC activities varies. In a number of cases the determining factor is that SMOC has no funds to pay for the participation of people who do not have access to funding from another source. SMOC does extensive consultation on North American Regional Action Plans (NARAPs) during formative stages when a proposed NARAP is drafted. Following government agency review in each of the three Parties, the proposed NARAP is posted on the CEC website for public access, and comments are solicited. The Council takes comments received into account in finalizing the

proposed NARAP for review and adoption in its annual meeting. There is greater opportunity for involvement of non-governmental engagement in the work of the NARAP implementation Task Forces, so that actions taken will best meet the problems defined by affected communities.

As to your interest in clarifying the process for nomination, selection, and responsibilities of non-governmental participants, although a "draft policy on stakeholder involvement" was under consideration as a possibility during preparation for the October 16-18 SMOC Working Group Meeting in Cuernavaca, during the governmental discussions on October 16th it was determined that the matter could be addressed, at least for the time being, in revised language in the "SMOC Overview and Update, October 2000" that was distributed to participants in the October 17th public meeting. Electronic copies of that paper can be obtained from the CEC Secretariat.

Engaging Local and Traditional Authorities

SMOC has made successful efforts to attract and include indigenous peoples at its stakeholder consultations. One example is that, in the drafting of the proposed NARAP on dioxins, furans, and HCB, indigenous representatives from both Canada and the U.S. actively participated in the process. Additionally, the stakeholder list for mercury included an extensive list of indigenous peoples, including many first nations, consultant contacts, and tribal environmental representatives in communities known to be affected by mercury consumption advisories in fish, to inform them that the plan was coming out for consultation and their input was highly valued.

SMOC has historically engaged local communities and promoted their participation in its efforts, despite limited resources. For example, the September Mercury task force workshop in Zacatecas represented follow up to an initial 1998 workshop that promoted dialogue with members of the community and state of Zacatecas, both on capacity building related to the larger issue of development of a heavy metals managerial capacity in Mexico and how such a program might be applied at the local level with respect to mercury, etc. With input from local academics and citizens, one outcome has been establishment of air monitoring network that will provide results nationally and include a reporting feature. The toxic hot spots mapping exercise that was an action in that NARAP is to be posted to the CEC website and thereby accessible to all. The DDT effort is exemplary, in that monitoring of alternative substances for health and environmental effects is a component, as is community engagement, both in removal of algae, etc. during larval stages, and in reporting cases of malaria so that mosquito breeding hot spots could be eliminated.

Safe Replacement Substances

SMOC has already put efforts into practice to ensure that the replacement substances are safe for human health and the environment, as is evident in its DDT NARAP approach. The provisions of the NARAP on Mercury are another example. SMOC is now looking into whether a trilateral oversight process, formalizing closer relations between SMOC and the Enforcement Working Group, is warranted for tracking fate and transport of substances, including illegal import and export. This was discussed as an agenda item at the SMOC Working Group Meeting, and the new SMOC Chairman will communicate with the EWG to develop specific possibilities and plans.

The three Parties are signatories to the Stockholm Convention, which includes provisions for research on health and environmental effects of alternatives to listed POPs substances, and which requires that Parties facilitate or undertake to exchange information on alternatives to persistent organic pollutants, including information relating to their risks as well as to their economic and social costs. SMOC provides a framework for coordinated national actions to encourage and

facilitate implementation of the Stockholm Convention in the North American region, through appropriate research, development, monitoring and cooperation pertaining to persistent organic pollutants and, as appropriate, their alternatives.

Financial Resources

SMOC is painfully aware that financial limitations have in turn imposed limits on what can be done, and has therefore developed and is now utilizing a leveraging strategy. Through this strategy, as trinational activities are identified for leveraging, organizations and associations are invited to participate in, and support implementation of, actions under the SMOC program. This strategy is set forth in a Capacity Building document developed under SMOC's Capacity Building Task Force, which, its work now completed, has been disbanded. Not only has that report proved very useful to SMOC, it has also been used as a model for development of capacity-building policies and plans in other fora.

Comprehensive Approach on Substance Selection, NARAPs, and Monitoring/Assessment
SMOC is currently reviewing the report of a report commissioned by the CEC Secretariat to review the substance selection process to determine whether it is adequate both in terms of its utility to date and ways in which it might be improved.

Although final determination of which substances (classes, or clusters of substances, etc.) governments will address does rest with the governments, the process will continue to include full public consultation. Currently, this occurs during a 45-day comment period on the discussion paper produced on a nominated substance by the Substance Selection Task Force (SSTF). These comments apprise SMOC of public concerns, which are then provided to the future TF nominees (assuming that a NARAP is the mechanism chosen to address the problem related to a substance) or other delegates tasked with collaborative action on a substance.

SMOC is committed to responding to the needs and realities of affected people and environments. For example, the Council's lindane resolution incorporates a number of concerns initially brought forward by stakeholders during the public consultation process. All comments were forwarded to members of the SSTF, which took each comment into account and determined to emphasize some of the concerns raised in its own letter to the SMOC WG. Transparency and information access is also an important feature of the Environmental Monitoring & Assessment NARAP. The Steering Committee established for that NARAP is actively considering how to engage and report to the public on data that arises from NARAP actions.

Disposition of Existing Inventories of Limited/Banned Substances

SMOC is seeking to develop a formalized process concerning tracking efforts that occur once a TF is closed. The EM&A Steering Committee and EM&A NARAP activities will also provide data on disposition and fate. This applies not only to existing inventories (which consist of known sources) but also would address any new sources that come to light as result of data gathering or other efforts.

NARAP on Lead

SMOC shares JPAC's interest in interfacing between the SMOC program and the initiatives on children's health. The SSTF is currently preparing a discussion document on lead for public consultation. It is anticipated that this document will include examples of activities that the three countries might take on lead, whether through a NARAP or other formal trinational activity(ies). SMOC anticipates, and will encourage, vigorous public dialogue and input on this document. It is anticipated that the document will be available this fall for public review.

Funding from External Sources for NARAPs

As noted earlier, SMOC is currently exploring leveraging activities that could be funded via the Canadian POPS Fund with CEC input and government in-kind contributions, as well as potential funding from the World Bank and UNEP.

In closing, the Council appreciates the suggestions forwarded by the JPAC on these important SMOC issues, and looks forward to future letters of advice.

Yours sincerely,

[Original signed]

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cc: Norine Smith
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JPAC Members
CEC Acting Executive Director